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Community and  
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# ***Rights and Responsibilities of Boards and Senior Management Staff of Service Providers***

**Under the Child and Family Services Act  
Volume 2**

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THE CHILD AND FAMILY SERVICES ACT TRAINING  
HANDBOOK (MARCH 1985) HAS BEEN REVISED  
AND CONSOLIDATED WITH REGULATIONS  
INTO THE FOLLOWING VOLUMES.

**VOLUME 1      FRONT-LINE SERVICE DELIVERY**

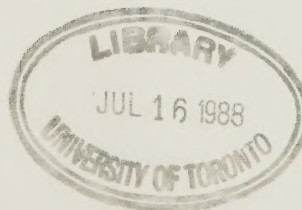
**VOLUME 2      BOARDS AND SENIOR MANAGEMENT STAFF OF**  
**SERVICE PROVIDERS**

**VOLUME 3      CHILD PROTECTION**

**VOLUME 4      CHILD ABUSE REPORTING**

**VOLUME 5      SERVICES TO YOUNG OFFENDERS**

**VOLUME 6      ADOPTION**







## FOREWORD

The Ministry of Community and Social Services is pleased to produce this revised and consolidated edition of the Child and Family Services Act Training Handbook. Consisting of six volumes (Volumes 3 and 4 being bound together), each is designed to assist service providers in the application of the new Act. The series presents the final revision of the extensive Training Handbook produced during the training program prior to proclamation.

Four of the volumes are complete in themselves and cover the whole of the topic named in the title. Two of the volumes, namely "Front-Line Service Delivery" and "Boards and Senior Management Staff of Service Providers", are more interrelated and there is overlap of subject matter so that material on a specific topic may be found in either one or both of the volumes. The reader may therefore need to consult the two volumes to obtain the complete information.

The principles of the Act are set out in both Volumes 1 and 2. The philosophy behind the Act is fundamental to comprehending the entire Act and readers of all volumes should ensure that they have a thorough understanding of these principles.

This edition is intended as an adjunct and complement to other Ministry publications and manuals that are now available or that will be available in the future. **It is important to remember that the content represents the statute, regulations and other information at the time of writing. Much work on implementation is still in progress and some parts of the Act are still to be proclaimed.**

December, 1985

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#### **APPENDICES**





## APPROVED AGENCIES AND CORPORATIONS

### BACKGROUND AND PRINCIPLES OF THE ACT

#### 1. THE PROCESS OF LEGISLATIVE REFORM

The Child and Family Services Act is the culmination of a process of legislative change and consolidation of law and policy begun by the Ministry of Community and Social Services in 1977, under the aegis of its then Children's Services Division. It represents several years of public consultation with individual agencies and groups throughout Ontario who have recognized and responded to the need to reform legislation dealing with children and families. Interim legislative amendments were enacted in 1979 but these were not intended to represent long-term or comprehensive legislative reform. In October 1982 a consultation paper entitled "The Children's Act" was released by the Ministry to seek response from the community on the following broad thrusts in policy development:

- o the need to bring the law governing Ministry programs into line with current social services theory and practice;
- o limitations in the social service delivery system that made it difficult for a service provider to respond to the needs of individual children and families;
- o the need to consolidate various pieces of legislation under which Ministry programs were mandated and to establish uniformity in their administrative processes in order to enhance efficiency within the service delivery system, and to ensure "fair treatment" of agencies providing service;
- o the need to address certain "rights" issues that had been ignored altogether or too vaguely addressed by existing legislation in order to bring the law affecting Ministry programs into line with the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code;

- o the need to establish, as far as practicable, and through an emphasis on openness, clarity of goals, time limits and agreements, a more equitable relationship between the person who seeks or requires service and the service provider.

Public debate and discussion with professionals and other interested groups and individuals in response to the consultation paper constituted a significant resource for the Ministry as it formulated draft legislation for introduction to the Provincial Legislature in December 1983.. It was then the subject of extensive debate by the Standing Committee on Social Development, members of which are drawn from the three political parties active in the Legislature. Bill 77 was drafted, received first reading May 18, 1984 and second reading June 20, 1984. The Bill received third and final reading December 11, 1984 and Royal Assent December 14, 1984, signifying that all necessary stages of the parliamentary process had been completed. The Child and Family Services Act came into force on November 1, 1985, with the exception of the following provisions:

- o Sections 34-36 inclusive, relating to residential placement advisory committees; (effective January 1, 1986)
- o Sections 109-119 inclusive, dealing with secure treatment proceedings;
- o Sections 124-125 inclusive, dealing with intrusive procedures;
- o Section 126, dealing with psychotropic drugs;
- o Section 157, dealing with adoption disclosure;
- o Sections 162-174 inclusive (Part VIII), dealing with confidentiality of and access to records.

Although Part X was proclaimed November 1, 1985, the Ministry has agreed with the Indian community that implementation will take place incrementally and only after consultation. It is estimated that this period of consultation will take 6-9 months after proclamation to complete. Individual sections of Part X will be implemented as consultation is completed and only after the appropriate policies and guidelines have been issued.

At proclamation the Child and Family Services Act replaced the following statutes:

- o The Child Welfare Act;

- o The Young Offenders Implementation Act (which included the Training Schools Act, the Children's Probation Act and the Provincial Courts Act as it related to observation and detention homes);
- o The Children's Residential Services Act;
- o The Developmental Services Act, as it relates to children;
- o The Charitable Institutions Act, as it relates to children;
- o The Children's Mental Health Services Act;
- o The Homes for Retarded Persons Act, as it relates to children;
- o The Children's Institutions Act.

The only children's statute under the Ministry of Community and Social Services' mandate not encompassed by the "omnibus" Child and Family Services Act is the Day Nurseries Act.

## **2. THE PRINCIPLES FUNDAMENTAL TO THE CHILD AND FAMILY SERVICES ACT**

The legislation attempts to strike an appropriate balance for rights of the family, rights of the child and rights of the service provider.

A cohesive philosophy for, and approach to, services to children and families and protection of children is provided by the Declaration of Principles that prefaces all other provisions of the Act. The declaration serves as an essential guide for decision-making under the Act.

The declaration itself has its roots in a Ministry publication developed in 1977 and titled "Basic Principles of Service Delivery" and in a further consultation paper published December, 1980 and titled "Children's Services Past, Present and Future".

Both documents embody as a basic approach to children's services, the best of practice and policy advocated by professionals at the front-line of service delivery.

### **(1) Paramount Objective of the Act**

**C.F.S.A. s.1(a)**

The first principle and paramount objective of the Act is the promotion of the best interests, protection and well-being of children. That consideration takes

precedence over any other principle in a decision affecting a particular child. This is the law's continuing acknowledgement that children are vulnerable because of their developmental immaturity and thus require protection, in certain circumstances, even from their own parents.

## **(2) Support of the Family**

**C.F.S.A. s.1(b)**

The second principle is a recognition that while parents may need help in caring for their children, the help should give support to the autonomy and integrity of the family unit rather than compete with it. Wherever possible, that service should be provided on a consensual basis.

The first aspect of this principle underscores the preference for service in the child's home, where possible, rather than care and supervision of the child away from the familiarity of his family.

Mutual consent is a prerequisite for certain provisions of service (e.g. agreements for residential care, i.e. temporary care and special needs) but it is not a necessary prerequisite to all services under the Act. There are circumstances in which service to a child must be provided over a family's objections, if the first and paramount objective of the Act is to be respected. Mutual consent is a desirable objective, and the statute recognizes that help is most effective when the child, family and service provider work together as a team to resolve difficulties that have necessitated the particular service.

This principle of voluntary service is reinforced throughout the Child and Family Services Act by specific attention to the matter of "consent", and the enhanced recognition given to voluntary service in Part II of the Act.

## **(3) The Least Disruptive Course of Action**

**C.F.S.A. s.1(c)**

The third objective of the Act is a consideration of the least restrictive or disruptive course of action that is available and appropriate in a particular case to help a child or family. This principle is reinforced throughout the Act by the preferences for service within the child's home as an alternative to removal of the child, the preference for community living as an alternative to institutional living, and the preference for open facilities as opposed to ones that are locked.



The principle is underscored further by direction to service providers and to the courts to choose from among the resources available the least restrictive alternative that is available and appropriate for the child. This direction reflects the general goal of keeping service provision as close to the child's home or community as possible, in as normal a setting as possible, and in the least restrictive manner that is consistent with the safety of the child and others. This principle also reflects the law's continuing acknowledgement that there are no perfect solutions when a parent's care must be supplemented or replaced, only alternatives to ensure that the child's needs and the needs of the family are met during the time that services are required.

**(4) Continuity of Care and Individualized Service C.F.S.A. s.1(d)**

The fourth principle is rooted in the child's need for continuity of care and respect for the child as a person. It recognizes that services to children should be provided in a manner that respects a child's need for continuity of care and for stable family relationships and that the services should take into account physical and mental developmental differences among children. The intent is to tailor the provision of services to a child's individual needs.

**(5) Respect for Cultural, Religious and Regional Differences C.F.S.A. s.1(e)**

The fifth objective of the new Act is to recognize that wherever possible, services to children and their families should be provided in a manner that respects cultural, religious and regional differences.

**(6) Special Recognition of Indian and Native People C.F.S.A. s.1(f)**

The sixth principle of the Child and Family Services Act is an extension of the fifth objective of the Act. It stipulates that Indian and native people should be entitled to provide their own child and family services wherever possible. All services under the Act to Indian and native children and families are to be provided in a manner that recognizes their culture, heritage and traditions and their concept of the extended family. This objective is consistent with the Act's emphasis on services that respond to individual needs, services which are community-based and community specific, and services which respect regional and cultural differences.

**(7) Duties of Service Providers****C.F.S.A. s.2(1)(2)**

The Child and Family Services Act also elevates to the status of law a philosophical and practical approach that should characterize all social service delivery:

- o the practice of giving parents and children the opportunity to be heard when decisions affecting their interests are being made and when they have questions or complaints regarding the provision of service;
- o the need for clear criteria and procedural safeguards to define the discretion of service provider, if the fundamental interests of children or parents will be affected by a decision;
- o the necessity of periodic review to monitor the provision of service to children and families. That principle is reinforced throughout the Act by its identification of service decisions that are particularly invasive to a family's autonomy and rights, and provision for review mechanisms;
- o provision of service in the French language where appropriate.

**3. THE ROLE OF REGULATION**

Regulations made under the Child and Family Services Act at the time of proclamation are designed to give uniformity to the new law and to ensure implementation in a manner that will not disrupt the continuity of service for children and families receiving service at the time of proclamation.

In general terms, the intent of the Ministry under its regulation-making power is to initially:

- o consolidate regulations under predecessor statutes in order to minimize the volume and complexity of requirements for service providers. This includes an updating of some requirements and elimination of clearly outdated provisions;

- o revise certain regulations made under predecessor statutes to bring those regulatory provisions into line with the best of current practice and policy, where this can be accomplished without imposing substantial new requirements on the service provider;
- o develop a small number of new regulations necessary to implement the Act.

The regulatory requirements will not reflect major shifts in either policy or procedure except where such shift is required by the new Act itself.

#### **4. THE ROLE OF MINISTRY STANDARDS AND GUIDELINES**

Wherever practicable, the Ministry intends to implement the new Act through guidelines and standards of practice. A guideline is a Ministry statement recommending a preferred level of care or performance. A guideline may also be a suggestion for service providers about how a particular requirement could be met. A standard is a Ministry statement setting out the minimum acceptable level of care or performance expected of a service provider.

#### **5. DEFINITION OF THE "SERVICE PROVIDER"** **C.F.S.A. ss.3(1), 27**

The Child and Family Services Act defines "service provider" to mean any of the following:

- a. any agency approved to provide services under Part I (Flexible Services);
- b. a children's aid society;
- c. a person or corporation licensed under Part IX (Licensing) to provide service;
- d. persons providing service through a purchase of services agreement contracted with the Minister or with an approved agency;

- e. the Minister of Community and Social Services (i.e. all Ministry operated services);
- f. persons providing services or consultation, research or evaluation and funded by a grant under Part I of the Act.

Foster parents are excluded from the definition of "service provider".

## **6. SERVICES AFFECTED BY THE ACT**

**C.F.S.A. s.3**

The Act establishes 5 broad categories of children's services:

- a. Child development service, i.e., service for a child with a developmental or physical handicap, a service for that child's family or a service for both the child and his family; **C.F.S.A. s.3(1)7, 26**

The definition is further clarified in the legislation: a developmental handicap means a condition of mental impairment present or occurring in a person's formative years that is associated with limitations in adaptive behaviour. **C.F.S.A. s.3(1)12**

- b. Child treatment service, i.e., a service for a child with a mental or psychiatric disorder, a service for that child's family or a service for both the child and the family; **C.F.S.A. s.3(1)8, 26**

This definition is further expanded with regard to secure treatment: a mental disorder means a substantial disorder of emotional processes, thought or cognition which grossly impairs a person's capacity to make reasoned judgments. **C.F.S.A. s.108(c)**

For administrative purposes in service planning, the definition has been further refined:

Child treatment services are those services provided to a child and/or to the child's family, where the child has been diagnosed by a psychiatrist as having a mental or psychiatric disorder, which:

- o are specifically provided to alleviate the mental or psychiatric disorder; and
- o are provided by, or under the supervision of, a psychiatrist who retains direct clinical responsibility for the case.

c. Child welfare service, i.e.:

- (i) residential or non-residential service, including a prevention service;
- (ii) a child protection service;
- (iii) an adoption service;
- (iv) individual or family counselling. **C.F.S.A. s.3(1)9, 26**

Residential service under the Child and Family Services Act is the provision of care to a child under the age of 18 years away from the home of the parent. It includes foster care; **C.F.S.A. s.3(1)25, 26**

For administrative purposes in service planning, the definition is further refined, and the following is the most recent description:

Child welfare services include client-related services to children provided by children's aid societies as described under section 15(3) of the Legislation.

d. Community support service, i.e., a support or prevention service provided in the community for children and their families; **C.F.S.A. s.3(1)10, 26**

For administrative purposes in service planning, the definition has been further refined:

Community support services generally do not target a specific identified client but are aimed at:

- o facilitation and/or improvement of social support for populations at risk;
- o reducing the likelihood of need for on-going or more intensive M.C.S.S. services among populations at risk.



Community support services also may include review and advisory bodies.

- e. Young offenders service, i.e., a service provided for youths 12 years of age and over who have come into conflict with the law. **C.F.S.A. s.3(1)29**
- f. The Ministry is considering using the authority under s.197(1)8 of the Act " to further define 'service' " by adding a sixth service:

Child and family intervention service, i.e., a service for a child with a social, emotional and/or behavioural problem, for the family of a child with a social, emotional and/or behavioural problem, or the child and the family.

For administrative purposes in service planning, the definition could be further refined:

Child and family intervention services are those services provided to a child and/or the child's family involving planned interventions based on multi-disciplinary professional approaches designed to alleviate a range of social, emotional and/or behavioural problems experienced by children and their families. They include assessment, applying methods of intervention with individuals, groups and families, re-integration activities and consultation to social systems.

## **7. PROVISION OF SERVICES IN THE FRENCH LANGUAGE**

### **(1) Ministry Objective**

A long-term Ministry objective is to ensure that in due course a full range of services in the French language will be available to children and families, where appropriate, in designated areas of the province. Detailed objectives relating to the new policy will be included in the operational plans of the service providers and in the Ministry work plans at area, regional and corporate levels. Area offices in designated areas will play a key role in implementation of the policy. The Office of the Coordinator of French Language Services will offer on-going assistance.

## **(2) The Service Provider's Obligation**

Selected service providers in designated areas will be expected to increase their effectiveness by serving Francophones in their own language. However, not all service providers will be required to provide services through both official languages. Agreed upon time-frames will be established through consultation between service providers and Ministry area staff.

Provision of French language services, "where appropriate" promotes best interests of the child, supports the integrity of the family unit and recognizes cultural differences.

## **(3) Types of Service**

Those service providers called upon to provide French language services will be expected to respond to over-the-counter, telephone and written communications in French when that is the language of the particular client, to produce information materials in French and generally to deal with clients and public in French when that is the preferred language.

## **(4) Planning Priorities and Procedures**

Service planning priorities will be developed in consultation between service providers and area staff. The resulting operational plan will take the following factors into account:

- a. service level in existence;
- b. service demand;
- c. service development realities.

## **(5) Areas of the Province Designated for French Language Services**

The Child and Family Services Act stipulates that services in French be provided "where appropriate". The Ministry's policy on this question is that the appropriate locations for provision of such services should be taken to be

the designated areas identified by the Ontario Government as areas where there are substantial numbers of Franco-Ontarians. These designated areas are:

a. Counties

Stormont, Glengarry (in the United Counties of Stormont, Dundas and Glengarry), Prescott and Russell

b. Regional Municipalities

Ottawa-Carleton and Sudbury

c. Districts

Nipissing, Timiskaming and Cochrane

d. Territorial Districts

Sudbury

e. Localities

Blind River, Elliot Lake, Michipicoten, North Shore and Algoma in Algoma District;

Anderdon, Bell River, Colchester North, Maidstone, Sandwich South, Sandwich West, Tecumseh, Tilbury North and Tilbury West in Essex County;

Dover, Tilbury and Tilbury East in Kent County;

Port Colborne and Welland in the regional municipality of Niagara;

Pembroke, Stafford and Westmeath in Renfrew County;

Penetanguishene and Tiny in Simcoe County;

Geraldton, Longlac, Manitouwadge and Marathon in the Thunder Bay District.

f. Metropolitan Centres

Ministry head offices providing services to French-speaking people throughout the province as well as the significant French-speaking population within Metropolitan Toronto are designated for some French-language capacity.

Also government offices located in Windsor, St. Catharines and Sault Ste. Marie should provide French-language services.

**8. SERVICES TO INDIAN AND NATIVE CHILDREN**

**(1) Generally**

In this and other sections throughout these volumes there are references to the provisions for Indian children and families, bands, and those persons who may become "native persons" within the meaning of the C.F.S.A. There is also information about Ministry's policy framework regarding services for persons of native descent who are neither Indian or "native persons" as defined in the C.F.S.A. and information regarding the Ministry's policies and procedures for implementation of the Act's provisions current at the time of writing.

These policies and procedures are interim and may be revised, refined or elaborated as a result of experience and on-going consultation with Indian and native organizations.

Under the general provisions of the C.F.S.A., the Ministry will be able to continue to support specific culturally sensitive services to persons of native descent, whether or not they are Indian or "native persons" as defined in the new Act.

There are persons of native descent who may be neither Indian under the Indian Act nor members of "native communities" that may be designated by



the Minister under the C.F.S.A. Nonetheless, the Ministry will develop policies, procedures and practice guidelines to ensure that all services to children and families of native descent, whether or not they are Indian or "native persons" as defined in the C.F.S.A., are provided in a manner that respects their culture. Input from native persons and organizations regarding these matters will be sought.

Guidelines will be developed with input from native organizations and directives sent to agencies regarding such matters.

## **(2) Definitions**

The statute defines Indian, band, "native person" and "native community" as follows:

- a. "band" has the same meaning as the Indian Act (Canada) **C.F.S.A. s.3(1)4**
- b. "Indian" has the same meaning as in the Indian Act (Canada)  
**C.F.S.A. s.3(1)15**
- c. "native community" is a community designated by the Minister under section 192 of Part X (Indian and Native Child and Family Services)  
**C.F.S.A. s.3(1)19**
- d. "native person" is a person who is a member of a native community but is not a member of a band. "Native child" has a corresponding meaning.  
**C.F.S.A. s.3(1)20**
- e. "native community" means a community designated by the Minister as a native community for the purposes of this Act. **C.F.S.A. s.192**

The original intent of the identification "native community" in the statute was to enable the Minister to designate communities of Indians that were:

- o located in the remote north on Crown lands;
- o organized in a manner similar to bands; and
- o without status as bands under the Indian Act.

The communities under consideration include those that were recognized by the federal government in April 1985 as bands under the Indian Act. In view of the federal government's recognition of these communities as bands, the Ministry is now reviewing which communities, if any, may be considered for designation in accordance with the original intent.

It should be noted, however, that the new legislation provides for general and specific ways to ensure that the courts and service providers are sensitive to the cultural needs of Indian and native children and families, whether or not they are members of Indian bands or "native communities" designated by the Minister.

### **(3) Indian and Native Child and Family Services**

### **C.F.S.A. Part X**

Part X of the Act addresses the provision of services for Indian and native children and their families through such mechanisms as:

- o designation of native communities (s.192);
- o agreements with bands and native communities (s.193);
- o designation of a child and family service authority (s.194);
- o subsidy for customary care (s.195);
- o consultation by a society or agency with bands and native communities (s.196).

Part X was proclaimed in force November 1, 1985 at the request of the Chiefs of Ontario with the understanding that all parties recognize the necessity for a period of transition towards its implementation. Consultation is continuing and information will be distributed as available.

## **FLEXIBLE SERVICE DELIVERY UNDER PART 1**

### **1. GENERALLY**

It is intrinsic to the philosophy underlying the Child and Family Services Act that services be responsive to the changing needs of children and families. Part I of the new legislation provides for that flexibility in both the structure and the administration of services encompassed by the Act. At the same time, the Act establishes mechanisms for accountability for service providers and the Ministry in relation to the delivery of services under the Act and the expenditure of public monies.

The flexible services provisions of the Act embody the Ministry's continuing efforts to establish an administrative structure that is better able to address the individual service needs of the children and families for which the Ministry is responsible.

### **2. SERVICES**

**C.F.S.A. s.3**

The Minister of Community and Social Services is given broad authority to fund a range of agencies to provide any of the following categories of service:

- o child welfare
- o child treatment
- o child development
- o community support
- o young offenders

and an additional service, which is under consideration,

- o child and family intervention.

These 5 broad service categories provide the framework within which service providers and the Ministry organize services to be delivered under the authority of the new legislation. (See page 8 for definitions.)

### **3. OPTIONS FOR FUNDING**

**C.F.S.A. s.7**

The Child and Family Services Act allows the Minister to fund the provision of services by any of the following means:

- a. through direct provision of service by the Ministry;
- b. through purchase of services from agencies, municipalities, or individuals;
- c. through approval of an agency to provide service;
- d. through grants and contributions.

### **4. DEEMED APPROVAL OF EXISTING AGENCIES**

**C.F.S.A. Part XII**

#### **(1) Generally**

While moving toward greater flexibility in the provision of services, the Act recognizes that continuity and stability in the service system is essential to the well-being of children. Changes in the service system structure are expected to be gradual and evolutionary.

In order to minimize disruption for service providers and families presently receiving services, agencies already approved according to the requirements of predecessor legislation are deemed to be approved under the Child and Family Services Act until their approval is terminated or a new approval granted under the Child and Family Services Act. The Act also applies to certain providers of developmental services not covered by the transition provisions.

#### **(2) Children's Aid Societies**

**C.F.S.A. ss.15, 208**

In addition to the broad service categories, the Act continues to provide for the designation of children's aid societies.

Societies have been addressed specifically in the Act to recognize the essential nature of child protection services.



A children's aid society approved according to the requirements of the Child Welfare Act is deemed to be an approved agency and a children's aid society under the Child and Family Services Act.

## **5. REQUIREMENTS OF AN AGENCY'S BOARD OF DIRECTORS**

### **(1) Filing By-laws with the Ministry**

**C.F.S.A. s.13(1)(2)**

An approved agency must file a certified copy of its by-laws, and any amendments, with the Ministry. This is to be done "forthwith" after the by-law or the amendment is made.

### **(2) Indian Band or Native Community Representation**

**C.F.S.A. s.13(3)**

If an approved agency provides services to Indian or native children and families, the Child and Family Service Act requires its board of directors to include band or native community representatives in its membership as prescribed by regulations made under the Child and Family Services Act. Regulations will be developed over time as necessary and in consultation with Indian and native people.

This requirement to include band and native community representatives underscores the Ministry's commitment to encourage the involvement of bands and native community representatives in the provision of social services to Indian and native families and children. As board members, the representatives participate fully and have the same rights and responsibilities as all other board members.

The requirement under the Act for Indian band and native community representation on the boards of approved agencies does not take effect until the regulations are in place. These will be developed through consultation with agencies, the Ontario Indian Social Services Council and other Indian and native organizations. Guidelines will be developed as a prelude to regulation. Preliminary analysis of relevant factors indicates that initially the guidelines should address children's aid societies. (See later section on children's aid societies, item 6(1).)

**(3) Exclusion of Agency Employees from Board Membership C.F.S.A. s.13(4)**

Under the Child and Family Services Act an employee of an approved agency is not permitted to be a member of the agency's board of directors.

The intent of this prohibition is to guard against conflicts of interest in decisions made by the board.

The proscription is not intended to prohibit the involvement of agency employees in board activities or their attendance at board meetings.

(See also Appendix 4 re general provisions governing the operation of corporations.)

**THE "APPROVED AGENCY" MEANS OF FUNDING****C.F.S.A. ss.8-10****1. GENERALLY**

The approval mechanism established by the Child and Family Services Act is not unlike provisions in the now repealed Children's Mental Health Services Act and the Children's Institutions Act.

The approval process is utilized where the Ministry wishes to establish a long-term funding relationship with an agency as a service provider. Agency approval is intended to provide stability within the social service system and to provide security to service providers and clients.

**2. SERVICES THAT MAY BE ENCOMPASSED BY THE APPROVAL****C.F.S.A. s.3**

An agency may seek the Minister's approval to provide any one or a combination of the categories of service permitted by the Act; namely, child welfare, child treatment, child development, community support or young offenders service.

**3. ELIGIBILITY FOR APPROVAL****C.F.S.A. s.8**

The Child and Family Services Act restricts eligibility for the Minister's approval to an "agency" and defines "agency" to mean a corporation. (See Appendix 4 for general provisions governing the operation of corporations.)

The "approved agency" means of funding service delivery is thus not available to an individual, or an unincorporated body (e.g. a partnership or association of persons).

As a matter of Ministry policy, "approved agency" status will not be extended to a corporation with share capital and in business for profit, or to a holding company.

**4. CRITERIA FOR APPROVAL****C.F.S.A. ss.8; 9**

The Child and Family Services Act requires the Minister to be satisfied of the following before he approves an agency to provide service under the Act:

- a. that the corporation is financially capable of establishing, maintaining and operating the particular service proposed, with such Ministry grants and contributions as are available to it;
- b. that the affairs of the corporation are carried on under competent management and in good faith;
- c. that the premises are suitable for providing the service(s) for which approval is sought.

**5. SATISFACTION OF THE CRITERIA FOR APPROVAL****C.F.S.A. s.197(1)15  
O. Reg. 550/85**

Regulation under the Child and Family Services Act stipulates:

- o Every agency that applies for an approval under section 8 of the Act shall file with the Minister,
  - (a) documentation of the need for the proposed service;
  - (b) evidence of financial viability, including where available, an audited financial statement of the agency for the preceding fiscal year together with a proposed budget for the proposed service;
  - (c) evidence that the agency is being managed in a competent manner including evidence of sound financial management;
  - (d) particulars of the program practice and procedures in place in the agency;
  - (e) particulars of corporations with which the agency has or may have a non-arms length relationship; and



- (f) evidence that applicable requirements of the municipality where the premises in which the proposed service will be provided are located have been complied with or can be complied with.

**O. Reg. 550/85, s.2(1)**

- o Every agency that applies for an approval under section 9 of the Act shall file with the Minister,
  - (a) a copy of the site plan showing the location of the building or buildings, if any, on the site and a sketch of the floor plan of the premises where it is proposed to provide the service;
  - (b) reasons for the location of the proposed service;
  - (c) documentation of the permitted uses of the proposed site under existing zoning by-laws of the municipality in which the site is located;
  - (d) such other information in addition to that required under clauses (a) to (c) as the Minister may require to determine that the proposed premises is suitable for providing a service and that there is a need for the service in the area served or to be served by the service; and
  - (e) evidence that the premises comply with,
    - (i) the laws respecting the health of inhabitants of the area in which the premises are located,
    - (ii) any rule, regulation, direction or order of the local board of health and any direction or order of the local medical officer of health,
    - (iii) any by-law of the municipality in which the premises are located or other law for the protection of persons from fire hazards,
    - (iv) any restricted area, standard of housing or building by-law passed by the municipality in which the premises are located under Part III of the Planning Act or any predecessor thereof, and
    - (v) the requirements of Ontario Regulation 583/83 (Building Code).

**O. Reg. 550/85, s.2(2)**

- o Every approved agency and every approved corporation shall appoint a person to act as the chief executive officer of the approved agency or approved corporation. **O. Reg. 550/85, s.3(1)**
- o A person who is appointed as the chief executive officer shall be responsible to the board of directors of the approved agency or approved corporation, as the case may be, for the operation and management of the approved services provided by the approved agency and each children's institution or children's mental health centre operated by the approved corporation. **O. Reg. 550/85, s.3(2)**
- o The requirement for a chief executive officer does not apply to a society insofar as it is providing services under section 15 of the Act. **O. Reg. 550/85, s.3(3)**

## **6. COMPLIANCE WITH RELEVANT LICENSING REQUIREMENTS**

A further prerequisite to "approved agency" status is compliance with licensing requirements, where licensing requirements are imposed by the Act (e.g. provision of residential care in children's residences).

## **7. EXTENT TO WHICH THE MINISTER MAY ASSIST THE AGENCY**

**C.F.S.A. ss.8; 9**

The Child and Family Services Act permits the following measures:

- a. retroactive approval; **C.F.S.A. s.8(4)**
- b. the payment of start-up costs to an agency that the Ministry intends to approve; **C.F.S.A. ss.18; 8(2)**
- c. where appropriate, exemption by regulation of an approved agency or approved service(s) from specific requirements of the Act or the regulations for a specified period or periods of time, in order to give the agency an opportunity to meet such requirements while continuing to provide service. The time frame for the exemption is a matter of

negotiated agreement between the agency and the Minister.

**C.F.S.A. s.197(1)6**

- d. capital, operating and other assistance as permitted by the regulations to assist in the provision of service, and/or in the maintenance and operation of the premises where the service is provided. **C.F.S.A. ss.8(3); 9(1)**

## **8. MINISTER'S DISCRETION TO ATTACH**

### **TERMS AND CONDITIONS TO THE APPROVAL**

**C.F.S.A. s.10**

The Child and Family Service Act allows the Minister to impose terms and conditions on the approval, if the agency's particular circumstances and needs indicate that conditions should be attached.

Conditions may include, for example:

- o restrictions on the agency's territorial jurisdiction;
- o sub-categories of service encompassed by the approval.

Agencies will be approved to deliver one or more of the 5 categories of service permitted by the Act. However, within these categories, certain agencies may be approved to provide only a sub-category of 1 of the 5 primary services. For example, certain child development or child treatment services may be approved to provide only day programs and not residential programs. Sub-categories of services are particularly important in relation to the approval of an agency to provide young offenders services. The Young Offenders Act (Canada) requires the specific designation of places of detention and custody. Thus, the sub-category of the service identified in the YOA designation may also be incorporated as a term or condition to the Minister's approval of the particular agency to provide service under the Child and Family Services Act.

## **9. MINISTRY VARIATION OF TERMS OF APPROVAL**

**C.F.S.A. s.10**

Terms and conditions attached to the approval may be varied or amended from time to time, as required. It is anticipated that most changes in terms

and conditions will not require review of the original approval. Review of the original report may, however, be necessary and is dependent on the purpose of the Ministry's varying of the terms and conditions attached to the approval.

If the Minister intends to vary or remove terms and conditions or impose new conditions to the approval, reasonable written notice must be given to the approved agency.

If the agency objects to the Minister's proposed variation, it may request that a designated Ministry director review its objections.

#### **10. LIFESPAN OF "APPROVED AGENCY" STATUS**

The Minister's approval is effective until it is revoked. (If time limit is considered necessary, the appropriate funding mechanism is a purchase of service rather than an "approved agency" status.)

#### **11. MINISTER'S AUTHORITY TO REVOKE OR SUSPEND THE APPROVAL**

**C.F.S.A. ss.22, 23 & 24**

##### **(1) Generally**

The Child and Family Services Act gives to the Minister substantially the same suspension and revocation powers that were contained in predecessor legislation (e.g. Child Welfare Act, Children's Institutions Act, Children's Mental Health Services Act.

What the Act gives to the approved agency is the right to be heard in response to any such action proposed by the Minister.

##### **(2) Grounds for Ministry Action**

An approved agency may request the Minister to revoke part or all of its approval.

The Minister continues to have a responsibility to revoke or suspend an approval where he believes on reasonable grounds that:



- a. in the course of providing service, an agency has contravened the Act, the regulations or the terms and conditions of an approval or designation (in the case of a society);
- b. a director, officer or employee of the service provider has contravened or knowingly permitted the contravention of the Act, regulations, terms or conditions of an approval or designation (in the case of a society);
- c. an agency would be refused approval if it were being applied for in the first instance;
- d. if the approved agency is a children's aid society, it is no longer able to perform the functions for which it was designated.

It is intended that these measures be used where there are serious violations of the law or circumstances where there is substantial concern for the well-being of children.

### **(3) Extent of the Revocation or Suspension Authority**

When an agency is approved to provide more than one service under the Act, the Minister may revoke or suspend these approvals.

### **(4) Notice to the Agency**

If the Minister intends to revoke or suspend an approval he must notify the agency in writing and give reasons for the proposed action, unless the agency has consented to or requested the Minister's intervention.

The notice must inform the agency that it is entitled to a hearing if it makes such request to the Minister in writing no later than 60 days after delivery of the notice.

If no such request is made, the Minister may take the action proposed in the notice after 60 days have elapsed.

### **(5) Agency's Entitlement to a Hearing**

If the approved agency requests a hearing, the Minister (or in the case of a society, the Lieutenant Governor in Council) is required to appoint one or

more persons who are not employed by the Ministry, to conduct the hearing and to make recommendations to the Minister.

The person or persons appointed must hold a formal hearing, rather than simply review the matter, and must submit a report to the Minister. The Act does not provide a specific time frame within which such hearing must be held, nor does it provide a time frame within which the report must be submitted to the Minister.

The report to the Minister must include relevant findings and a recommendation as to whether or not the Minister's proposed action should be carried out. A copy of the report must be sent to the agency.

The Minister is not bound by the recommendations contained in the report. The Child and Family Services Act gives the appointed person only an advisory function. It is the responsibility of the Minister to review his proposed action with the assistance of the report, to make his final decision, and to notify the service provider accordingly, with the reasons for his decision.

## **12. PROVISIONAL SUSPENSION OF APPROVAL**

**C.F.S.A. s.22(9)**

### **(1) Generally**

The authority to suspend or revoke approval on a provisional basis allows the Minister to act in an emergency situation. The Minister may exercise this power where there is an immediate threat to the public interest or to the well-being of an individual.

### **(2) Notice**

The Minister exercises the above power by notice to the agency and without prior hearing.

### **(3) Agency's Entitlement to a Hearing**

The Minister shall cause a hearing to be held to review the action. Suspension of the approval is thus provisional pending the outcome of the hearing, the

Minister's consideration of the recommendations contained in the report made to him by the hearing officer and the Minister's final decision.

### **13. MINISTER'S ORDER TO CEASE ACTIVITY**

**C.F.S.A. s.23(3)**

The Minister may, by notice and without a hearing, order a service provider to suspend or cease any one or all of its activities where the Minister has reasonable grounds to believe that the activity is a threat to the public interest or is causing or is likely to cause harm to a person's health, safety or welfare. In addition to ordering a cessation of activity, the Minister may take any other action he deems to be in the best interest of the service recipients.

The Act's provisions relating to notice and entitlement to a hearing extend to the Minister's order to cease activity.

### **14. FINANCIAL RECORDS TO BE MAINTAINED**

**O. Reg. 550/85**

Regulations under the Child and Family Services Act stipulate:

- o Every approved agency and every approved corporation shall keep books of account that shall,
  - (a) set forth the revenue and expenditures of the approved agency or approved corporation;
  - (b) contain a record of money received by the approved agency or approved corporation from sources other than under the Act and this Regulation; and
  - (c) be audited annually by a licensed public accountant who is not a member of the board or an employee of the approved agency or approved corporation or an employee of a corporation with which the approved agency or approved corporation may have a non-arms length relationship.
- o The revenue and expenditure of an approved agency thus required shall be itemized according to each service provided by the approved agency.

**O. Reg. 550/85, s.4(1)**

**O. Reg. 550/85, s.4(2)**

- o Every approved agency and every approved corporation shall furnish to the Minister,
  - (a) not later than the last day of the fourth month following the end of each fiscal year,
    - (i) its annual financial statement together with an auditor's report thereon prepared by a licensed public accountant, and
    - (ii) a reconciliation report in a form provided by the Minister together with a report thereon prepared by a licensed public accountant;
  - (b) on a monthly or quarterly basis as required by the Minister, a financial report in a form provided by the Minister that includes statistics on the services provided by the approved agency or the children's institutions or children's mental health centres operated by the approved corporation; and
  - (c) an annual submission in a form provided by the Minister on expenditures and revenues of each children's residence licensed under Part IX of the Act that is operated by the approved agency or approved corporation. **O. Reg. 550/85, s.5(1)**
- o An auditor's report required under this section shall be prepared in accordance with generally accepted auditing standards as set forth in the handbook of the Canadian Institute of Chartered Accountants. **O. Reg. 550/85, s.5(2)**
- o A reconciliation report shall include a calculation of the financial assistance payable by Ontario, the actual payments made by Ontario with respect to the fiscal year and a calculation made of the balance that may be owing by or repayable to Ontario. **O. Reg. 550/85, s.5(3)**
- o Where a municipality is required to contribute financial assistance for the operation of a society the reconciliation report shall include a calculation of the financial assistance payable by the municipality, the actual payments made by the municipality with respect to the fiscal year and a calculation of the balance that may be owing by or repayable to the municipality. **O. Reg. 550/85, s.5(4)**



- o Every approved agency and every approved corporation shall keep separate books of account for each children's residence licensed under Part IX of the Act that is operated by the approved agency or the approved corporation. **O. Reg. 550/85, s.6(1)**
- o Every approved corporation shall keep separate books of account for each children's institution or children's mental health centre operated by the approved corporation. **O. Reg. 550/85, s.6(2)**
- o Every approved agency shall keep separate books of account for each service provided by the approved agency. **O. Reg. 550/85, s.6(3)**
- o Each book of account shall show aggregate revenues and expenditures separately with respect to each service provided by the approved agency or the children's institutions or children's mental health centres operated by the approved corporation, as the case may be. **O. Reg. 550/85, s.6(4)**
- o Each book of account shall be retained for at least 7 years from the date of the last entry in the book for a particular year. **O. Reg. 550/85, s.6(5)**
- o Every approved agency and every approved corporation shall keep and maintain an up-to-date record of the inventory of all furnishings and equipment acquired by the approved agency or approved corporation with moneys paid by Ontario under section 8 or 9 of the Act. **O. Reg. 550/85, s.7(1)**
- o A record of current inventory shall set forth each addition to or removal from the inventory and the reasons therefor and shall be prepared in such a manner and contain such additional information with respect to the inventory as the Minister may require. **O. Reg. 550/85, s.7(2)**

**15. APPLICATION TO THE MINISTRY FOR FINANCIAL ASSISTANCE — CAPITAL**

**O. Reg. 550/85**

Regulations under the Child and Family Services Act stipulate:

- o An application for financial assistance under section 8 of the Act in respect of a building project by an approved agency or approved corporation shall be made to the Minister on a form provided by the Minister. **O. Reg. 550/85, s.8(1)**
  
- o An applicant for financial assistance shall file with the Minister 2 copies of a site plan showing the location of the building or buildings, if any, on the site and, in the case of a building project with one or more of the elements referred to in clauses (a), (b), (d) and (f) of the definition of building project in section 1 of the Regulations,
  - (a) building plans and specifications prepared by an architect or professional engineer showing the structure, fixtures and arrangements of the building or buildings and describing the areas of the building or buildings to be used for the purposes of the Act; or
  - (b) where the Minister approves, structural sketches and specifications prepared by a person other than an architect or professional engineer describing the building or buildings and the areas of the building or buildings or contiguous to the building or buildings to be used for the purpose of the Act. **O. Reg. 550/85, s.8(2)**
  
- o No plan, specification or structural sketch filed with the Minister shall be amended or altered without the approval of the Minister. **O. Reg. 550/85, s.8(3)**
  
- o No payment of financial assistance shall be made for a building project except where,
  - (a) the building project has been approved by the Minister; and
  - (b) the approved cost has been determined. **O. Reg. 550/85, s.9(1)**
  
- o The amount of a payment to an approved agency or to an approved corporation under section 8 of the Act for a building project shall be in an amount determined by the Minister up to 80 per cent of the approved cost of the building project. **O. Reg. 550/85, s.9(2)**

- o An approval of a building project by the Minister expires on the first anniversary of the date upon which the approval is given unless the building project has been commenced before the anniversary date.

**O. Reg. 550/85, s.9(3)**

- o The aggregate of the amounts of assistance paid at any point in time shall not exceed,
  - (a) an amount that bears the same proportion to the estimated total payment as the amount of progress made at the time towards completion of the project bears to the total estimated amount of work required for completion; or
  - (b) an amount that bears the same proportion to the estimated total payment as the amount of cost incurred at the time bears to the total estimated cost of the project,

whichever is the greater, except where the Minister directs otherwise.

**O. Reg. 550/85, s.9(4)**

- o A single payment, or in the case of payment in 2 or more instalments, the final payment of an amount payable for a building project shall not be made until,
  - (a) an architect or professional engineer certifies or the Minister is otherwise satisfied that the building project has been completed in accordance with the plans filed under clause 8(2)(a) of the sketches thereof approved by the Minister under clause 8(2)(b) and the building or addition is ready for use and occupancy; and
  - (b) the applicant for the payment submits a report containing,
    - (i) a statement of the actual cost of the building project,
    - (ii) a statement indicating that all refundable sales tax has been taken into account,
    - (iii) a statement indicating that the total amount of the unpaid accounts applicable to the building project does not exceed the amount of the grant remaining to be paid, and

- (iv) an undertaking that the amount of the grant remaining to be paid will be applied first to the payment of the unpaid accounts.

**O. Reg. 550/85, s.9(5)**

- o No applicant for or recipient of financial assistance for a building project shall,

- (a) acquire a building or land for the building project;
- (b) call tenders for the building project;
- (c) commence construction of the building project; or
- (d) erect any temporary or permanent sign, tablet or plaque on the site or building project,

without the written approval of the Minister.

**O. Reg. 550/85, s.10**

- o It is a term and condition of a payment of financial assistance under section 8 of the Act in respect of a building, buildings or land forming part of a building project that the applicant for payment enter into an agreement with the Minister in which the applicant shall agree not to,

- (a) change the site, structure or use of or sell, agree to sell, lease, mortgage, encumber, donate or otherwise dispose of all or any part of the building, buildings or land; or
- (b) demolish or make alterations or additions to all or any part of the building or buildings,

without the written approval of the Minister.

**O. Reg. 550/85, s.11(1)**

- o The Minister may require as a condition of this approval that the applicant shall reimburse Ontario in the same ratio as the Minister's share of the acquisition price, together with the costs of renovations, furnishing and equipment, less the costs of disposition, if any, based on the greater of,

(a) current market value; or

(b) the proceeds of disposition.

**O. Reg. 550/85, s.11(2)**

- o Where a recipient of financial assistance for a building project contravenes s.11(1), the Minister may require repayment of all or a part of the share referred to in s.11(2) and calculated in accordance with that subsection.

**O. Reg. 550/85, s.11(3)**

- o Repayment of all or part of the share referred to in s.11(2) may be obtained by,

(a) deducting the share from any monies payable to the recipient under the Act; or

(b) recovering the share by proceedings in a court of competent jurisdiction.

**O. Reg. 550/85, s.11(4)**

- o Expenditures incurred by an approved agency or an approved corporation for,

(a) furnishing and equipment that are not replacements; or

(b) repairs to or maintenance of a capital asset,

are capital expenditures if they are,

(c) approved by the Minister as capital expenditures;

(d) in the opinion of the Minister, necessary for the efficient operation of an approved service operated by the approved agency or an approved children's institution or approved children's mental health centre operated by an approved corporation, as the case may be, and the cost of which is not in the opinion of the Minister excessive for the purpose; and

(e) are in excess of \$1,000.

**O. Reg. 550/85, s.12(1)**



- o Financial assistance may be paid for capital expenditures referred to in s.12(1) upon application by the approved agency or approved corporation in an amount up to 80 per cent of the cost as determined by the Minister.

**O. Reg. 550/85, s.12(2)**

- o Notwithstanding s.9(2) and 12(2) of the Regulation, the amount of a payment for financial assistance under section 8 of the Act to an approved agency or approved corporation for a building project or for the items referred to in s.12(1) of the Regulation shall be equal to an amount determined by the Minister up to the total approved cost of the building project or the items where, in the opinion of the Minister, the requirement for the service, children's mental health centre or children's institution is established and funds are not otherwise obtainable by the approved agency or approved corporation.

**O. Reg. 550/85, s.13**

## **16. BUDGET APPROVAL PROCESS FOR APPROVED AGENCIES**

**O. Reg. 550/85**

Regulations under the Child and Family Services Act stipulate:

- o This section (s.14) does not apply to a society insofar as it is providing services under section 15 of the Act.
- O. Reg. 550/85, s.14(1)**
- o Every approved agency and every approved corporation shall, before a date fixed by the Minister in each year, prepare and file with the Minister in a form provided by the Minister an estimate of its net expenditures for the next fiscal year.
- O. Reg. 550/85, s.14(2)**
- o Children's aid societies, children's institutions and children's mental health centres are currently required to submit a service plan. For these approved agencies, the estimate of expenditures is filed as part of the service plan. The service plan also includes a description of the services and functions to be provided by the agency, and is the means by which funding and services are approved and monitored.
- O. Reg. 550/85, s.27**
- o Where an approved agency or approved corporation does not file an estimate of net expenditures in accordance with section 14(2) before the

date fixed by the Minister, the Minister may at any time thereafter determine the amount of the estimate and cause the estimate to be filed with the approved agency or approved corporation.

**O. Reg. 550/85, s.14(3)**

- o An approved agency or approved corporation may, at any time up to 1 year after the end of the fiscal year of the agency or corporation, file with the Minister an amendment to the estimate of net expenditures.

**O. Reg. 550/85, s.14(4)**

- o The Minister may approve an estimate of net expenditures or an amendment thereto or the Minister may refuse to approve the estimate or the amendment or the Minister may vary the estimate or amendment and approve it as varied.

**O. Reg. 550/85, s.14(5)**

- o The Minister may vary an estimate of net expenditures so approved at any time up to 1 year after the receipt of the annual financial statement and reconciliation report required under clause 5(1)(a).

**O. Reg. 550/85, s.14(6)**

- o Where the Minister proposes to refuse to approve an estimate of net expenditures or an amendment to an estimate of net expenditures or proposes to vary an estimate of net expenditures, the Minister shall give notice of the proposal to the approved agency or approved corporation forthwith.

**O. Reg. 550/85, s.14(7)**

- o An approved agency or approved corporation that receives such notice or with which an estimate is filed under s.14(3) of the Regulation may, within 30 days of receipt of the notice or estimate, request,

(a) a meeting with the Minister;

(b) that the Minister consider written submissions from the approved agency or approved corporation; or

(c) both a meeting and the consideration of written submissions from the approved agency or approved corporation.

**O. Reg. 550/85, s.14(8)**

- o A date for a meeting shall be fixed and written submissions shall be filed no later than 30 days after receipt of the request by the Minister under subsection (8) unless otherwise agreed by the Minister.

**O. Reg. 550/85, s.14(9)**

- o The Minister shall consider the presentation made by the approved agency or approved corporation during the meeting or its written submissions or both.

**O. Reg. 550/85, s.14(10)**

- o After considering the presentation of the approved agency or approved corporation the Minister may,

- (a) approve the estimate of net expenditures or an amendment thereto;

- (b) refuse to approve the estimate or the amendment;

- (c) vary the estimate or amendment and approve it as varied; or

- (d) confirm the amount of the estimate determined under s.14(3).

**O. Reg. 550/85, s.14(11)**

- o Such decision of the Minister is final.

**O. Reg. 550/85, s.14(12)**

- o Where an approved agency or approved corporation receives a notice under s.14(7) and does not make a request within the 30 day period set out in s.14(8), the Minister's decision with respect to the estimate of net expenditures, the amendment to an estimate of net expenditures or a determination of the amount of an estimate of net expenditures is final.

**O. Reg. 550/85, s.14(13)**

## **17. WORDS DEFINED BY REGULATION**

**O. Reg. 550/85, s.1(1)**

Regulation governing approved agencies and approved corporations give specific meaning to certain words used in the Regulation. Note the following:

"acceptable exit" means that part of a means of egress that meets the requirements of Ontario Regulation 583/83 (Building Code) and that leads to a public thoroughfare or to an approved open space and that may include any one of the items enumerated herein or any combination thereof:

1. An exterior doorway to grade.
2. An exterior ramp.
3. An exterior stairway.
4. A fire escape that meets the specification of Sentences 3.4.8.14(1), (2), (3), (6), (7), (8), (9), (10), (11), (12) and (13) of Ontario Regulation 583/83 (Building Code).
5. An interior stairway that is separated from the remainder of the building by a fire separation;

"actual cost" means the cost of a building project and includes,

- (a) fees payable for the services of an architect, professional engineer or other consultant,
- (b) the cost of purchasing and installing furnishings and equipment,
- (c) the cost of land surveys, soil tests, permits, licences and legal fees,
- (d) the cost of paving, sodding and landscaping, and
- (e) the cost of acquiring land necessary for the building project;

"approved corporation" means an approved corporation that is continued under subsection 209(2) or 211(2) of the Act;

"approved cost" means that portion of the actual cost of a building project approved by the Minister;

"approved estimate" means an estimate of net expenditures of an approved agency or approved corporation finally approved under Part I;

"architect" means an architect who is a member in good standing of the Ontario Association of Architects;

"building project" means a project composed of one or more of the following elements:

- (a) the purchase or other acquisition of all or any part of an existing building or buildings including the land contiguous thereto,
- (b) any renovations, alterations or additions to an existing building or buildings,
- (c) the purchase or acquisition of vacant land for the purpose of constructing a building or buildings thereon,
- (d) the erection of a new building or any part thereof,
- (e) the demolition of a building,
- (f) the installation of public utilities, sewers and items or services necessary for access to the land or building or buildings;

"common parentage" means one common parent;

"fiscal year" of an approved agency or approved corporation is the period designated by the Minister as the fiscal year of the approved agency or approved corporation, as the case may be;

"fuel-fired appliance" means a device that is designed for use in heating and cooling systems that is operated on fuel and includes all components, controls, wiring and piping required to be part of the device under the requirements of Ontario Regulation 583/83 (Building Code);

"net expenditures" means the costs, less applicable revenue, reasonable and necessary for the provision of approved services by an approved agency or



the operation of an approved children's mental health centre or approved children's institution, as the case may be, but does not include the costs for which financial assistance is paid under section 8 of the Act in accordance with sections 9, 11, 12 and 13 (Financial Assistance, Capital) of this Regulation;

"non-arms length relationship" means a relationship between two parties such that one party has the ability to exercise, directly or indirectly, control or significant influence over the operating and financial decisions of the other party;

"population" means,

- (a) the population as determined by the last municipal census taken prior to the year for which an estimate of net expenditures is made, except in territory without municipal organization,
- (b) in territory as determined by the last municipal census taken prior to the year for which an estimate of net expenditures is made, except in territory without municipal organization,

"professional engineer" means a professional engineer who is a member in good standing of the Association of Professional Engineers of the Province of Ontario.

## **RELATIONSHIPS BETWEEN THE MINISTRY AND SERVICE PROVIDERS**

### **1. REPORTING REQUIREMENTS**

**C.F.S.A. s.5(5)**

The Child and Family Services Act requires service providers to furnish reports to the Ministry of Community and Social Services in the manner and within the time periods prescribed by the regulations made under the Act, and to further provide particular information to the Minister of Community and Social Services as requested.

Such reports assist the Ministry in obtaining adequate information relating to the services provided under its jurisdiction in order to account for expenditures to the Ontario Cabinet and to the legislature, to prioritize service requirements, to identify issues that require the Ministry's attention, and generally to manage the business of the Ministry. This data is also available for review by the Provincial Auditor as required by law.

### **2. DUTIES AND RESPONSIBILITIES OF MINISTRY DIRECTORS AND PROGRAM SUPERVISORS**

**C.F.S.A. ss.6; 25**

#### **(1) Generally**

Directors and program supervisors appointed by the Ministry of Community and Social Services have essentially the same responsibilities that they had under predecessor legislation.

#### **(2) Deemed Appointments**

**C.F.S.A. ss.208; 209; 210; 211**

Directors and program supervisors appointed under predecessor statutes are deemed to be appointed under new legislation. These appointments include directors under the Child Welfare Act, Children's Institutions Act, Children's Residential Services Act and Children's Mental Health Services Act, and program supervisors and program advisors under the Children's Institutions Act, Children's Residential Services Act and the Young Offenders Act (Canada). Provincial directors charged with responsibility for young offenders under the latter legislation are also deemed appointed under the new Act and continue their duties under Part IV of the Act.

With a few exceptions, there are no plans in the short term to revise the current appointments. Over the long term the Minister may review the powers and responsibilities of directors and program supervisors to determine whether such designations and delegations are meeting the service goals of the Child and Family Services Act. Duties and responsibilities of directors currently are set out in Appendix 3.

**(3) Role of the Program Supervisor**

**C.F.S.A. s.6**

One of the responsibilities of the Ministry program supervisor under the Child and Family Services Act continues to be one of ensuring compliance with the legislation and its regulations. To that end, the Child and Family Services Act permits the program supervisor, on providing proper identification to the service provider, to enter premises where an approved service is provided, to inspect the facilities and the service provided, and to inspect the books of account and records relating to the service. The program supervisor may take copies of the records and may remove the books for that purpose.

The Child and Family Services Act requires the program supervisor's inspection to be undertaken at a reasonable time.

**(4) Interference with a Program Supervisor**

**C.F.S.A. s.6(2); 27**

It is an offence to hinder the program supervisor in the performance of his duties, to refuse to give a program supervisor access to books and records, or information that he reasonably requires regarding a particular service or to give false information to him.

A person who knowingly does so is liable, if convicted by the Provincial Offences Court, to a fine of up to \$2,000. Any director, officer or employee of a corporation who authorizes, permits or concurs in any such contravention by the corporation, is similarly liable.

## CHILDREN'S AID SOCIETIES

### STRUCTURE AND ACCOUNTABILITY OF SOCIETIES

#### Preserved from Predecessor Legislation

#### 1. SOCIETY, PROVINCIAL AND MUNICIPAL RELATIONSHIPS

**C.F.S.A. ss.10, 15, 16, 17, 18 & 19**

##### (1) Generally

The essential operating structure of a children's aid society and its inter-relationship with the province and the municipality are preserved by the Child and Family Services Act. Under the new Act:

- a. a society will continue to have at its helm a local director who has the qualifications, powers and duties prescribed by regulations made under the Act. In the short term, prescriptions of predecessor regulations in this area are incorporated into regulation under the new Act;  
**C.F.S.A. s.16**
- b. society by-laws and by-law amendments do not come into force until they are approved by the Minister;  
**C.F.S.A. s.15(5)**
- c. the board of directors of a society continues to include municipal representatives as prescribed by the regulations;  
**C.F.S.A. s.18**
- d. the society continues to receive partial financing from the municipality, as determined by the regulations;  
**C.F.S.A. s.19(3)**
- e. the estimated expenditures of a children's aid society continues to require the Minister's approval. Provincial contribution to society funding, the budget cycle and budget review procedures remain unchanged. The prescriptions of predecessor regulation are continued in regulations under the new Act;  
**C.F.S.A. s.19(4)**

f. a Ministry director continues to:

- (i) advise and supervise children's aid societies;
- (ii) undertake the inspection of societies' operations and records, and resources for children in their care;
- (iii) monitor the standard of services provided by societies to ensure that the practices and procedures prescribed by the regulations under the Child and Family Services Act are met;  
and
- (iv) exercise the powers and duties of a children's aid society in any area where no society is functioning; **C.F.S.A. s.17**

g. any transfer or assignment of assets acquired by a society with financial assistance from the Ministry of Community and Social Services must continue to meet the requirements of the regulations under the Child and Family Services Act, in order to ensure accountability for public funds. Regulations of predecessor legislation addressing this area are consolidated under the Child and Family Services Act and made applicable to all approved agencies. **C.F.S.A. s.10(3)**

**(2) Municipal Representation for Societies**

**O. Reg. 550/85**

Regulations made under the Act require the following municipal representation on a society's board of directors:

- o The number of municipal representatives on the board of directors of a society that has jurisdiction in but not outside a city, separated town or a district, regional or metropolitan municipality, shall not be fewer than 4 appointed from among themselves by the council of the city, separated town or the district, regional or metropolitan municipality.

**O. Reg. 550/85, s.15(1)**

- o The municipal representatives of a society that has jurisdiction in a county but not in a city or separated town, shall be not fewer than 4 appointed from among themselves by the council of the county.

**O. Reg. 550/85, s.15(2)**



- o The municipal representatives of a society that has jurisdiction in an area that includes a county or part of a county outside a city, separated town or a district, regional or metropolitan municipality shall be as follows:

1. One municipal representative shall be appointed from among themselves by the council of each county, city, separated town and the district, regional or metropolitan municipality in the jurisdiction.
2. The council of the county, city, separated town or the district, regional or metropolitan municipality having the largest population as determined by the last revised assessment rolls shall appoint from among themselves such other municipal representatives as are required so that the total number of municipal representatives on the board of directors is not fewer than 4. **O. Reg. 550/85, s.15(3)**

- o In subsection (1) to (3), a reference to a city or separated town does not include a city or separated town in a district, regional or metropolitan municipality. **O. Reg. 550/85, s.15(4)**

- o The municipal representatives of a society that has jurisdiction in an area that includes a district or part of a district outside a city or a district, regional or metropolitan municipality, shall be appointed in the manner determined under subsection (3), except that the District Child Welfare Budget Board established under section 17 or the district welfare administration board, as the case may be, shall appoint the representatives required by subsection (3) to be appointed by the council of a county. **O. Reg. 550/85, s.15(5)**

### **(3) Society Budgets**

**O. Reg. 550/85**

Regulation under the new Act stipulates:

Re: Establishment of District Child Welfare Budget Board

- o The council of each municipality, as defined in the District Welfare Administration Boards Act, in a district as defined in that Act in which a district welfare administration board has not been established shall, on or

before the 1st day of October in each year, jointly appoint five persons to be a board known as the District Child Welfare Budget Board.

**O. Reg. 550/85, s.17**

Estimate of net expenditures

**O. Reg. 550/85**

Regulation under the Act requires the following in relation to a society providing services under section 15 of the Act:

- o Every society shall before a date to be fixed each year by the Minister, which date shall be no later than the last day of February in the year next following, prepare in a form provided by the Minister and file with the Minister and with each municipality in the area in which the society has jurisdiction, an estimate of its net expenditures for the year next following.

**O. Reg. 550/85, s.18(2)**

- o The estimate of net expenditures of a society in a district in which a district welfare administration board has been established shall be filed within the time set out in subsection (2) with the Minister and the board.

**O. Reg. 550/85, s.18(3)**

- o The estimate of net expenditures of a society in a district in which a district welfare administration has not been established shall be filed within the time set out in subsection (2) with the Minister and the District Child Welfare Budget Board established under section 17 in that district.

**O. Reg. 550/85, s.18(4)**

- o The Minister, at any time after the date fixed by the Minister has expired and the society has not filed an estimate, may determine the amount of the estimate and cause the estimate to be filed with the society and with each municipality in the area in which the society has jurisdiction or with the District Child Welfare Budget Board, as the case may be.

**O. Reg. 550/85, s.18(5)**

- o An estimate filed by the Minister under subsection (5) shall, subject to subsection 20(2) (review), be deemed to be approved by the Minister under subsection 19(1) 60 days after it is filed.

**O. Reg. 550/85, s.18(6)**

- o The council of every municipality or District Child Welfare Board, as the case may be, with whom an estimate is filed shall, subject to subsection 20(1) (review), grant its approval to the estimate within 60 days after the filing of the estimate with the municipality or with the District Child Welfare Budget Board. **O. Reg. 550/85, s.18(7)**

- o A municipality or District Child Welfare Budget Board, as the case may be, that has not, within the 60-day period fixed under subsection (7),

- (a) granted its approval to the estimate; or

- (b) referred the estimate to a child welfare review committee,

shall, at the expiration of that period, be deemed to have granted its approval to the estimate. **O. Reg. 550/85, s.18(8)**

- o Where a society has jurisdiction in more than 1 municipality, the portion of the estimate of net expenditures of the society that is referable to each municipality shall, subject to subsection 21(11) (decision of Minister),

- (a) in respect of the cost of services for each child in care, be in the proportion that the number of children taken at any time into protective care in the municipality and who are in care during the year immediately preceding the year for which the estimate of net expenditures is made, bears to the total number of children in care in that immediately preceding year;

- (b) in respect of the cost of services other than services for children in care, be in the proportion that the population of the municipality bears to the total population of the area in the jurisdiction of the society; and

- (c) where by arrangement with a municipality the standard of services provided to the municipality exceeds that provided to any other municipality in the jurisdiction of the society, include the entire cost of the excess. **O. Reg. 550/85, s.18(9)**

- o For the purpose of subsection (9), the number of children in the care of a society during the year shall be computed as the average for the year of the number of children in the care of the society on the last day of each month in the year. **O. Reg. 550/85, s.18(10)**
  
- o Subsection (9) does not apply where a district welfare administration board has been established under the District Welfare Administration Boards Act. **O. Reg. 550/85, s.18(11)**
  
- o For the purposes of subsection (9), "child in care" means a person under 18 years of age who is in the care or custody of a society,
  - (a) while in detention in a place of safety under subsection 40(2), clause 40(3)(d), subsection 40(6) or clause 40(10)(b) of the Act,
  - (b) during the placement of a homemaker under section 74 of the Act, or
  - (c) as a result of an order under section 53 of the Act or an agreement under section 29 or 30 of the Act respecting the care and custody of the person where the person is cared for in a place other than in the home of the person's parent,
 and includes a person who is receiving care and maintenance from a society under section 67(2) of the Act and "children in care" has a corresponding meaning. **O. Reg. 550/85, s.18(12)**

Minister's authority to approve or vary

**O. Reg. 550/85**

Regulation under the Child and Family Services Act stipulates:

- o After an estimate is filed and approved by the council of each municipality, the Minister may approve the estimate as filed or, subject to subsection 20(2) (review), vary the amount of the estimate and approve the estimate as so varied. **O. Reg. 550/85, s.19(1)**

- o Where the Minister intends to vary the amount of an estimate and to approve the estimate as so varied under subsection (1), the Minister shall, at least 30 days prior to approving the estimate, cause notice to be given of the Minister's intention to vary and approve the estimate to the society and to the council of each municipality in the area in which the society has jurisdiction or to the District Child Welfare Budget Board, as the case may be.

**O. Reg. 550/85, s.19(2)**

Referral to a child welfare review committee

**O. Reg. 550/85**

- o A council of a municipality or a District Child Welfare Budget Board that does not agree with,
  - (a) the amount of the estimate referable to a municipality, where an estimate has been filed by a society with the municipality or the Board; or
  - (b) the portion of the estimate that is referable to a municipality,

may on or before the expiration of 60 days after the filing of the estimate with the municipality or the District Child Welfare Budget Board, as the case may be, request the Minister to refer the matter to a child welfare review committee.

**O. Reg. 550/85, s.20(1)**

- o A society, the council of a municipality or a District Child Welfare Budget Board that does not agree with,
  - (a) the amount of an estimate that has been filed by the Minister under subsection 18(5); or
  - (b) the amount of an estimate that the Minister intends to approve as varied under subsection 19(1),

may,

  - (c) in the case of an estimate referred to in clause (a), before the expiration of 60 days after the filing of the estimate; and



- (d) in the case of an estimate referred to in clause (b), after receiving notice of the Minister's intention to vary the amount of an estimate and before the Minister's approval is given to vary the amount of the estimate,

request the Minister to refer the matter to a child welfare review committee.

**O. Reg. 550/85, s.20(2)**

- o A council of a municipality or a District Child Welfare Budget Board that does not agree with the portion of the estimate referable to a municipality, where an estimate has been filed by the Minister with the municipality or the Board, may, before the expiration of 60 days after the filing of the estimate, request the Minister to refer the matter to a child welfare review committee.

**O. Reg. 550/85, s.20(3)**

- o For the purposes of this section (s.21) and section 20, a child welfare review committee shall consist of,

- (a) one member appointed by the Minister, who shall be chairman;

- (b) one member appointed by the Ontario Association of Children's Aid Societies; and

- (c) one member appointed by the council of the municipality or the District Child Welfare Budget Board, as the case may be.

**O. Reg. 550/85, s.21(1)**

- o Where a society has jurisdiction in more than 1 municipality and there is no District Child Welfare Budget Board, the member to be appointed under clause (1)(c) shall be appointed jointly by those municipalities.

**O. Reg. 550/85, s.21(2)**

- o The Minister shall, after receiving a request to refer a matter to a child welfare review committee, forthwith appoint the member referred to in clause (1)(a) and cause notice to be given to the Ontario Association of Children's Aid Societies and the council of the municipality or the District Child Welfare Budget Board, as the case may be, to appoint, within 10 days of the notice having been given, the members referred to

in clauses (1)(b) and (c), respectively, and to inform the Minister forthwith of the names of the members so appointed.

**O. Reg. 550/85, s.21(3)**

- o The Minister shall, after being informed of the members so appointed, forthwith cause notice of the names of the members of the child welfare review committee to be given to the parties concerned.

**O. Reg. 550/85, s.21(4)**

- o Where a party who receives a notice to appoint a member to the committee under subsection (3) fails to appoint a member within the time prescribed, the Minister shall, in the place of the party who failed to make the appointment, forthwith appoint the member to the committee.

**O. Reg. 550/85, s.21(5)**

- o A child welfare review committee shall be convened by the chairman thereof within 10 days after all the members have been appointed and the committee shall determine its own procedures.

**O. Reg. 550/85, s.21(6)**

- o A child welfare review committee may receive such written or oral evidence from a director, the society, the municipality or District Child Welfare Budget Board or any other person as it in its discretion considers proper whether admissible in a court of law or not and may require the director to present evidence and made submissions.

**O. Reg. 550/85, s.21(7)**

- o A director shall, when required by a child welfare review committee, present evidence and make submissions before the committee.

**O. Reg. 550/85, s.21(8)**

- o A child welfare review committee shall review the evidence submitted to it and obtain any additional evidence or material it considers necessary.

**O. Reg. 550/85, s.21(9)**

- o A child welfare review committee shall report its findings to make recommendations to the Minister within 30 days from the date that the committee first convenes and the findings and recommendations of the committee shall be made available to the parties concerned.

**O. Reg. 550/85, s.21(10)**

- o After reviewing the findings and recommendations of a child welfare review committee, the Minister may approve the estimate that is the subject of the review, vary the amount of the estimate and approve the estimate as so varied or determine the portion of the estimate referable to a municipality and the decision of the Minister is final.

**O. Reg. 550/85, s.21(11)**

- o Notice of the Minister's decision shall be given to the parties concerned within 30 days after the Minister receives the report and recommendations of a child welfare review committee.

**O. Reg. 550/85, s.21(12)**

Provincial share

**O. Reg. 550/85**

Regulation under the new Act stipulates:

- o For the purpose of subsection 19(2) of the Act, the amount that shall be paid to a society by the Minister shall be equal to,
  - (a) 80 per cent of the part of the approved estimate referable to any municipality within the jurisdiction of the society; and
  - (b) 100 per cent of the part of the approved estimate of the society referable to territory without municipal organization.

**O. Reg. 550/85, s.22(1)**

- o The part of the approved estimate of a society referable to territory without municipal organization shall be determined under subsection 18(9) as if the territory without municipal organization were a municipality.

**O. Reg. 550/85, s.22(2)**

- o For the purposes of subsection 19(3) of the Act, a municipality shall pay to the society having jurisdiction in the area of that municipality 20 per cent of the amount of the portion determined under subsection 18(9) of the approved estimate of the society that is referable to the municipality.

**O. Reg. 550/85, s.22(3)**

Amendments to estimate of net expenditure**O. Reg. 550/85**

Regulation under the Act provides:

- o After the estimate of net expenditures of a society for a year is finally approved by the Minister, the society may at any time within 1 year after the end of the society's fiscal year file with the Minister and with each municipality in the area in which the society has jurisdiction,

- (a) an amendment to the approved estimate; or

- (b) a supplementary estimate of net expenditures,

of the society not included in the original approved estimate for the year.

**O. Reg. 550/85, s.23(1)**

- o A municipality shall grant its approval to the amendment or supplementary estimate, as the case may be, within 60 days after the receipt thereof.

**O. Reg. 550/85, s.23(2)**

- o A municipality in the area in which a society has jurisdiction that has not granted its approval to an amendment or supplementary estimate filed under subsection (1) or requested the Minister to refer the amount of the amendment or supplementary estimate to a child welfare review committee within 60 days after receiving notice thereof from the society, shall at the expiration of that period be deemed to have granted its approval to the amount of the estimate.

**O. Reg. 550/85, s.23(3)**

- o The council of a municipality in the area in which a society has jurisdiction that does not agree with the amount of,

- (a) an amendment to an approved estimate; or

- (b) a supplementary estimate,

may, before the Minister's refusal or approval is given, in lieu of approving the amendment or supplementary estimate and before the expiration of the 60-day period referred to in subsection (2), request the Minister to refer the matter to a child welfare review committee.

**O. Reg. 550/85, s.23(4)**

- o The Ministry may approve an amendment to an approved estimate or an amount of a supplementary estimate that has been filed with the Minister under subsection (1) and approved by the council of each municipality or the Minister may, subject to subsection (6), refuse to approve the amendment or the supplementary estimate or may vary the amount of the amendment or the supplementary estimate and approve the amount so varied.

**O. Reg. 550/85, s.23(5)**

- o Where the Minister intends,
  - (a) to refuse to approve the amount of an amendment to an approved estimate or the amount of a supplementary estimate filed under subsection (1); or
  - (b) to vary the amount of an amendment to an approved estimate or the amount of a supplementary estimate filed under subsection (1) and approve any such amount as so varied;

the Minister shall, at least 30 days prior to the refusal or approval give notice of the Minister's intention to the society and to the council of each municipality in the area in which the society has jurisdiction.

**O. Reg. 550/85, s.23(6)**

- o A society or the council of a municipality in the area in which the society has jurisdiction that does not agree with the Minister's intention,
  - (a) to refuse to approve the payment of the amount of an amendment to an approved estimate or the amount of the society's supplementary estimate filed under subsection (1); or
  - (b) to vary the amount of an amendment to an approved estimate or the amount of a supplementary estimate filed under subsection (10),

may, before the Minister's refusal or approval is given, request the Minister to refer the matter to a child welfare review committee.

**O. Reg. 550/85, s.23(7)**



- o The provisions of sections 20 and 21 apply with necessary modifications to a request for review made under subsection (4) or (7).

**O. Reg. 550/85, s.23(8)**

- o In this section a District Child Welfare Budget Board that is established for a district under section 17 for the purpose of approving the estimate of net expenditures of a society may,

- (a) approve an amendment or supplementary estimate of net expenditures;
- (b) request a review of an amendment or supplementary estimate of net expenditures; and
- (c) receive any notice required to be given to a municipality in respect of an amendment or supplementary estimate of net expenditures.

**O. Reg. 550/85, s.23(9)**

- o An amount of an amendment to an approved estimate or an amount of a supplementary estimate submitted under subsection (1) that is approved by the Minister under subsection (5) and by a municipality shall be deemed to be part of the approved estimate of the society for the year for the purpose of determining the amounts payable to the society under subsections 19(2) and (3) of the Act.

**O. Reg. 550/85, s.23(10)**

- o A certificate of approval of an estimate of net expenditures of a society shall be made in Form 1 and shall be forwarded to the society forthwith after the approval is given.

**O. Reg. 550/85, s.23(11)**

- o For the purpose of computing a payment under section 22, the costs determined in accordance with the approved estimate, of care and services provided by a society for any child,
- (a) in care pursuant to an order made by a court or competent jurisdiction in a province other than Ontario or a territory of Canada; or

- (b) who, immediately before coming into the care of the society, was under the care or supervision of a child welfare authority in a province other than Ontario or a territory of Canada in a place other than the home of a parent of the child pursuant to an agreement between a parent of the child and the child welfare authority entered into under the laws of that province or territory, as the case may be; and
- (c) who is approved by a Director,

shall be excluded and Ontario shall pay to the society an amount equal to 100 per cent of the cost of the care and services. **O. Reg. 550/85, s.24(1)**

- o For the purpose of computing a payment under section 22, the costs of a society determined in accordance with the approved estimate of any demonstration project that is approved by the Minister shall be excluded and Ontario shall pay 100 per cent of the cost of the demonstration project.

**O. Reg. 550/85, s.24(2)**

#### Care and service for Indians

**O. Reg. 550/85**

#### Regulations under the Act stipulate:

- o For the purpose of computing a payment under section 22, where an agreement is entered into with the Crown in right of Canada providing for contributions by Canada to Ontario for the payment of the cost of the care and services provided by societies for Indians who reside in Ontario on Indian reserves, on Crown land or in territory without municipal organization or who are designated as Indians with reserve status by the Minister of Indian Affairs and Northern Development of the Government of Canada, the cost of the care and services determined in accordance with the approved estimate shall be excluded from the computation under section 22 and Ontario shall pay to the societies an amount equal to 100 per cent of the cost of care and services.
- O. Reg. 550/85, s.25(1)**
- o Subsection (1) continues to apply to an Indian who commences to reside in a municipality in Ontario until the Indian has resided in the municipality for a period of twelve consecutive months.
- O. Reg. 550/85, s.25(2)**

- o Subsection (1) ceases to apply to an Indian who has resided in a municipality for twelve consecutive months until the Indian resumes residence in Ontario on an Indian reserve, on Crown land or in territory without municipal organization.

**O. Reg. 550/85, s.25(3)**

Payments and adjustments

**O. Reg. 550/85**

Regulation under the Act provides:

- o An amount paid to an approved agency or an approved corporation under section 14 shall not exceed the amount of the approved estimate and such amount shall only be expended by the approved agency or approved corporation in accordance with the approved estimate.

**O. Reg. 550/85, s.26(1)**

- o An amount payable under this Part may be paid in advance.

**O. Reg. 550/85, s.26(2)**

- o An amount paid under this Part may be adjusted by the Minister upon receipt of the annual financial statement and the reconciliation report of the approved agency or approved corporation required under section 5.

**O. Reg. 550/85, s.26(3)**

- o The amount of an adjustment to an approved estimate,

- (a) shall be refunded by the approved agency or approved corporation to Ontario when Ontario so requests; or

- (b) shall be taken into account in calculating the amounts payable to the approved agency or approved corporation for the next fiscal year.

**O. Reg. 550/85, s.26(4)**

Service plans and estimates

**O. Reg. 550/85**

(See also page 35, item #16.)

Regulation under the Act stipulates:

- o An estimate of net expenditures shall, when required by the Minister, be accompanied by a service plan that is approved in writing by the board of directors of the approved agency or approved corporation for,
  - (a) the approved services provided by the approved agency; and
  - (b) each children's institution or children's mental health centre operated by the approved corporation. **O. Reg. 550/85, s.27(1)**
- o An estimate of net expenditures or an amendment thereto shall be approved in writing by the board of directors of the approved agency or approved corporation, as the case may be, before being filed with the Minister. **O. Reg. 550/85, s.27(2)**

**2. STAFF QUALIFICATIONS OF SOCIETIES      O. Reg. 550/85, ss.1, 28, 29**

Regulations made under the new legislation continue the regulation under the Child Welfare Act substantially intact. This is an interim measure and an advisory committee has been established to review the regulation and make recommendations on how the provision should be updated.

The regulation states:

In this Part,

- o "recognized school of social work" means:
  - (a) a school of social work in Canada that at the time this Regulation comes into force is accredited by the Canadian Association of Schools of Social Work, and
  - (b) a graduate school of social work outside of Canada that has, in the opinion of the Minister, a course in social work that is equivalent to a course given at a school referred to in clause (a);
- o "social work assistant" means a person who:

- (a) has successfully completed Grade 13 in Ontario or has such other educational qualifications that the Minister considers equivalent thereto, or
  - (b) worked as a social worker with a society for a period of at least 1 year immediately before the 1st day of January, 1985;
- o "social worker" means a person who investigates or supervises children who are in care and who provides guidance and counselling;

"social worker I" means a person who:

- (a) is the holder of a certificate in social services from a post-secondary educational institution in Canada that is at least equivalent to a certificate in social services from a College of Applied Arts and Technology in Ontario, or
- (b) has such other educational qualifications that the Minister considers equivalent to those referred to in clause (a) and at least 2 years of experience in social work;

o "social worker II" means a person who:

- (a) has successfully completed 1 year of full-time study in social work at a recognized school of social work and, where the recognized school of social work is outside Canada or the United States of America, has at least 1 year of experience as a social worker in Canada, or
- (b) has at least 3 years of progressively responsible experience in welfare work in Ontario and has the qualifications of a social work assistant or 2 years of such experience and has the qualifications of a social worker I;

o "social worker III" means a person who:

- (a) has successfully completed a 2-year course of professional education in social work at a recognized school of social work in Canada or the United States of America,



- (b) has successfully completed 1 year of full-time study in social work at a recognized school of social work in Canada or the United States of America and, after the study, has had at least 2 years of experience in social work,
  - (c) is the holder of a certificate of qualification in social work issued by the Central Council of Education in Social Work in Great Britain and, after its issuance, has had at least 1 year of experience in social work, or
  - (d) has successfully completed a course of professional education in social work at a recognized school of social work in a country other than Canada or the United States of America and has had at least 3 years of experience in social work in Canada;
- o "social worker IV" means a person who:
  - (a) has successfully completed a 2-year course of professional education in social work at a recognized school of social work in Canada or the United States of America and, after graduation, has had at least 3 years of experience in child care or family welfare services,
  - (b) is the holder of a certificate of qualification in social work issued by the Central Council of Education in Social Work in Great Britain and, after its issuance, has had at least 4 years of experience in child care or family welfare services, or
  - (c) has successfully completed a 2-year course of professional education in social work at a recognized school of social work outside Canada or the United States of America and, after graduation, has had at least 5 years of experience in child care or family welfare services;
- o "social worker V" means a person who,
  - (a) has successfully completed a 2-year course of professional education in social work at a recognized school of social work in Canada or the United States of America and, after graduation, has had at least 5

years of experience in social work at least 2 of which have been in child care or family welfare services,

- (b) is the holder of a certificate of qualification in social work issued by the Central Council of Education in Social Work in Great Britain and after its issuance, has had at least 6 years of experience in social work of which at least 2 have been in child care or family welfare services, or
  - (c) has successfully completed a 2-year course of professional education in social work at a recognized school of social work outside Canada or the United States of America and, after graduation, has had at least 7 years of experience in social work of which at least 3 have been in child care or family welfare services;
- o "social work supervisor" means a person who:
- (a) has the qualifications of a social worker III, social worker IV or social worker V and has had at least 3 years experience as a social work practitioner in child welfare, or
  - (b) has such other educational and personal qualifications together with progressive experience in social work practice as, in the opinion of the local director, constitute adequate and suitable preparation for supervisory duties.
- o no society shall employ a social worker unless the person is a social worker assistant, a social worker I, a social worker II, a social worker III, a social worker IV, a social worker V or a social work supervisor.

**O. Reg. 550/85, s.28**

- o every local director of a society shall be a person who:
- (a) has successfully completed 2 years of professional education in social work at a recognized school of social work and has had at least 3 years experience as a social work practitioner in child welfare;

(b) has educational qualifications that together with his experience in social work are, in the opinion of the Minister, suitable for the position; or

(c) held the appointment of local director on the 1st day of June, 1985.

**O. Reg. 550/85, s.29**

### **3. THE ROLE OF THE MINISTRY PROGRAM SUPERVISOR**

**C.F.S.A. ss.5, 6, 25**

Much of the responsibility given to a Ministry director under the Child and Family Services Act is delegated to a program supervisor.

For the purpose of ensuring compliance with the legislation and its regulations, a program supervisor is authorized to enter a society's premises at all reasonable times and upon producing proper identification to the society, the program supervisor may:

- a. inspect the society's facilities;
- b. inspect the services provided by the society;
- c. inspect the society's book of accounts;
- d. inspect the society's records relating to the society's services. This includes the authority to inspect case files under the society's control.

The program supervisor may make copies of the books and records or may remove them from the premises to copy them as he reasonably requires.

It is an offence under the Child and Family Services Act to hinder the program supervisor in the performance of his duties or to knowingly give false information to him. A person who knowingly does so or a society director, officer or employee who authorizes, permits or concurs in such contravention by the society, if convicted of the offence, is liable to a fine of up to \$2,000.

**C.F.S.A. s.25**

#### **4. REQUIREMENTS OF A SOCIETY'S BOARD OF DIRECTORS**

##### **(1) Filing of By-laws with the Ministry**

**C.F.S.A. s.13(1)(2)**

The Child and Family Services Act preserves the requirement that every children's aid society agency file with the Ministry:

- a. a certified copy of its by-laws;
- b. a certified copy of any amendment to a by-law.

This action is to be undertaken "forthwith" after the by-law or the amendment is made.

As specified by predecessor legislation, the Child and Family Services Act requires the society's by-laws to contain certain provisions prescribed by regulations. No new regulations are anticipated at the time of proclamation. The Ministry's development of regulatory prescriptions in this area will be undertaken as necessary and over time in consultation with all approved agencies, including children's aid societies. The overall intent is not to create a plethora of regulation, but rather, in the interest of uniformity throughout the service system, to formalize a limited number of prescriptions to address the basic functioning and composition of boards of directors.

##### **(2) Executive Committee of the Board of Directors**

**O. Reg. 550/85**

Regulation made under the new legislation stipulates:

- o The board of directors of a society shall pass a by-law that provides for an executive committee that consists of the president and the treasurer of the board of directors and that provides for the election from among their number of 7 additional members being 4 municipal representatives and 3 other directors.  
**O. Reg. 550/85, s.16(1)**
- o The board of directors shall by by-law delegate to the executive committee any powers of the board of directors, subject to restrictions, if any, contained in the by-law or imposed from time to time by the board.  
**O. Reg. 550/85, s.16(2)**

- o A majority of the members of an executive committee constitutes a quorum.

**O. Reg. 550/85, s.16(3)**

**Either Substantially New or Revised from Predecessor Legislation**

**5. DESIGNATION OF AN APPROVED AGENCY**

**AS A CHILDREN'S AID SOCIETY**

**C.F.S.A. ss.15(2); 208(2)(a)**

As part of the legislature's preference for a flexible mode of service delivery, the Child and Family Services Act allows the Minister of Community and Social Services to designate an agency that he has approved to provide service under the new Act as a children's aid society for a specified territorial jurisdiction, and for any or all of the functions assigned to a society by the legislation. The Minister may:

- a. impose conditions on a designation at any time;
- b. vary the conditions or impose new ones;
- c. alter the society's territorial jurisdiction;
- d. amend a designation by removing specific functions from the authority of a society.

The designation power given to the Minister by the new legislation permits development of the service system structure that may be considered desirable at some future time through the joint community planning efforts of the Ministry and service agencies.

The designation power further allows a society to negotiate with the Ministry a broadening or narrowing of the services it provides, in order to better meet community needs, and to take into account the resources available in the community.

Children's aid societies in operation at the time of proclamation of the new Act are deemed to be approved agencies and deemed to have been designated as societies in accordance with the new legislation.



**6. ADDITIONAL REQUIREMENTS ON A  
SOCIETY'S BOARD OF DIRECTORS**

**C.F.S.A. s.13(3)(4)**

**(1) Indian Band or Native Community Representation**

**C.F.S.A. s.13(3)**

If a children's aid society provides services to Indian or native children and families, the Child and Family Services Act requires its board of directors to include band or native community representatives in its membership as prescribed by regulations made under the Child and Family Services Act. Regulations will be developed over time as necessary and in consultation with Indian and native people.

This requirement to include band and native community representatives underscores the Ministry's commitment to encourage the involvement of bands and native community representatives in the provision of social services to Indian and native families and children. As board members, the representatives participate fully and have the same rights and responsibilities as all other board members.

This requirement of the Act does not take effect until the regulations are in place. Such regulations will be developed through consultation with societies, the Ontario Indian Social Services Council and other Indian and native organizations. Guidelines will be developed as a prelude to regulation. Preliminary analysis of relevant factors indicates that:

- a. initially, the guidelines should be developed for children's aid societies;
- b. representation should be required only if the society has a reserve in its catchment area;
- c. the number and proportion of Indian children in the area and in care should be considered;
- d. the manner of appointment and the terms to be served should be addressed;
- e. the manner in which the broader community of persons of native descent may be represented should also be addressed.

**(2) Exclusion of Society Employees from Board Membership C.F.S.A. s.13(4)**

Under the Child and Family Services Act an employee of a children's aid society is not permitted to be a member of the society's board of directors.

The intent of this prohibition is to guard against conflicts of interest in decisions made by the board.

The proscription is not intended to prohibit the involvement of society employees in board activities or their attendance at board meetings.

**7. INCREASED PROTECTIONS FOR SOCIETY IF MINISTER**

**PROPOSES SUSPENSION OR REVOCATION**

**C.F.S.A. ss.22; 24**

**(1) Generally**

Predecessor legislation authorized the Lieutenant-Governor in Council, on the recommendation of the Minister, to dissolve a society at any time and on such date as the order provided. The society faced with such action at the behest of the Ministry had no legislated right to be heard in its own cause. The Child and Family Services Act attempts to redress that imbalance.

**(2) Basis for Action**

**C.F.S.A. ss.22(1); 24; 15; 8; 9**

Before exercising his suspension or revocation powers, the Child and Family Services Act requires the Minister to be satisfied on reasonable grounds that:

- a. the society cannot or is not performing any or all of the functions entrusted to it by the legislation; or
- b. the society is failing to perform its designated functions in any part of its territorial jurisdiction; or
- c. the society is failing to fulfill any or all of the terms and conditions of its approved agency status; or
- d. the society would fail to qualify as an approved agency; or

- e. in the course of providing service, the society or any of its officers, directors or employees has contravened the Act, regulations or the terms of its designation.

### **(3) Minister's Remedies**

If so satisfied, the Minister is then empowered by the Act to take any of the following actions to counter the particular circumstances that necessitated intervention:

- a. to revoke or suspend the society's designation or approval to carry on the functions of a children's aid society;
- b. to remove any or all of the members of the society's board and to appoint others in their place;
- c. to operate and manage the society in the place of the board of directors.

### **(4) Requirement of Notice to the Affected Society**

The Minister must give the affected society notice of his specific proposal, and written reasons for it, before he takes any action, unless the society has either requested that the Minister exercise this power or has consented to the proposal. In the latter instance, no formal notice is required because the intervention is essentially a consensual arrangement between the society and the Ministry.

The notice must inform the society of its right to a hearing.

### **(5) Provisional Suspension in Crisis Situation**

**C.F.S.A. s.22(9)**

The Minister may take any of the above-noted actions without awaiting the outcome of a hearing where, in his opinion, it is necessary to do so to avert an immediate threat to the public interest or to a person's health, safety or welfare, and he so states in his notice to the society. The notice must contain his reasons.

The society is entitled to a hearing after the Minister's intervention, as set out below.

## **(6) Society's Right to Hearing**

The society is entitled to a hearing before a person or persons appointed by the Lieutenant-Governor in Council, if it makes a request for a hearing in writing within 60 days of its receipt of the Minister's notice. The Lieutenant-Governor's appointees may not be employees of the Ministry of Community and Social Services.

The hearing mechanism gives both the society and the Minister an opportunity to present their respective cases before an impartial arbiter. The Child and Family Services Act does not specify a time period within which the hearing must be held, but it is in the interests of both the society and the Ministry to proceed with reasonable dispatch.

The person(s) appointed must weigh the facts and then make written recommendations to the Minister. The appointee is required to set out in his report the facts, the information or knowledge that led to his recommendations and any conclusions of law. A copy of the report must be given to the affected society.

The Minister then makes his final decision. The Act requires him to give written notice of that final decision to the society, together with his reasons for it.

## **(7) Scope of the Minister's Authority on Takeover of a Society**

**C.F.S.A. s.24**

The Child and Family Services Act empowers the Minister to apply to the District Court, if necessary, to obtain the assistance of the county sheriff in occupying the society's premises. This application may be made without notice to the affected society.

Where the Ministry operates and manages a society pursuant to the takeover power, the Child and Family Services Act gives the Minister all the powers of a society's board of directors, including discretion to:

- a. carry on the society's business;
- b. enter into contracts on the society's behalf;

- c. arrange for bank accounts to be opened in the society's name, and authorize persons to sign cheques and other documents on the society's behalf;
- d. appoint or dismiss employees of the society; and
- e. make by-laws.

Under the takeover power, the Ministry has authority to manage the society's financial and legal affairs and has both the responsibilities and the rights of an employer, subject to any collective bargaining agreement in force within the society.

The takeover authority also gives the Minister the right to occupy and operate the society's premises for whatever period is required to remedy the circumstances that necessitated the takeover. The Child and Family Services Act sets an upper time limit of 1 year to the Minister's takeover, unless the society consents to a longer period or the Lieutenant-Governor extends the takeover beyond the 1 year period.

## **8. EXPANSION OF THE JUDICIAL INQUIRY POWER**

**C.F.S.A. s.63**

Under predecessor legislation the Minister was empowered to appoint a judge of the County Court to investigate either the proper administration of the protection provisions of the Act or the particular case of a child in the care of a children's aid society.

The Child and Family Services Act expands the Minister's authority to allow appointment of a judge of the Supreme, District or Unified Family Court or the Provincial Court (Civil, Criminal or Family Division) or the Provincial Offences Court to investigate a matter relating to a child in the care of a children's aid society or a matter relating to the proper administration of Part III of the Act and to make a written report to the Minister. For the purposes of the investigation the judge has the powers of a commission under the Public Inquiries Act and the investigation may be conducted as if it were an inquiry under that legislation.

At the conclusion of the inquiry, the judge makes a written report to the Minister.



## SERVICE RESPONSIBILITIES OF SOCIETIES

### Preserved from Predecessor Legislation

#### 1. ESSENTIAL FUNCTIONS OF A SOCIETY C.F.S.A. ss.15(3); 197(4)

The Child and Family Services Act also preserves the essential functions of a children's aid society that were legislated under predecessor law. Under the Child and Family Services Act, children's aid societies will continue to:

- a. investigate allegations or evidence that children under 16 years of age, or children in the care or under the supervision of a society, may be in need of protection;
- b. where necessary, protect children who are under 16 of years of age or who are in the society's care or under its supervision;
- c. provide guidance, counselling and other services to families in order to protect their children or to prevent circumstances requiring their protection;
- d. provide care for children assigned or committed to the society's care under the Child and Family Services Act;
- e. supervise children assigned to its supervision under the Child and Family Services Act;
- f. place children for adoption in accordance with Part VII of the Act (Adoption); and
- g. perform any other duties given to it by the Child and Family Services Act or any other provincial statute.

As mandated by predecessor law, these duties are to be carried out in accordance with the standard of service, procedures and practices embodied in the Act and regulations. The new legislation clarifies that the society's

protection responsibility extends not only to the child in the community but also to a child in the care of a society or under its supervision, even if the child in care or under supervision is over 16 years of age.

The Child and Family Services Act does not make specific reference to services for children born or likely to be born outside marriage. This is not to be interpreted as an exclusion of this class of persons from a society's service. The society's authority to intervene is found in its general functions.

## **2. SERVICE TO PROSPECTIVE FOSTER PARENTS O. Reg. 551/85, s.6**

Regulation under the Child and Family Services Act requires every society that receives an application to board a child that is in the care of the society, within 30 days after receiving the application, to begin an investigation of the applicant and the home of the applicant.

## **3. RESPONSE TO A COMPLAINT RESPECTING A CHILD OR A REQUEST FOR SERVICE O. Reg. 551/85**

Regulations under the new legislation require the following response to a complaint respecting a child or a request for assistance or service:

- o Every society shall record,
  - (a) a complaint respecting a child where in the opinion of the society there are reasonable and probable grounds to believe that the child is in need of protection; and

- (b) a request for assistance or service,

within 24 hours of receiving the complaint or request.

**O. Reg. 551/85, s.1(1)**

- o The society shall investigate each complaint within 21 days after the complaint is recorded and further record within the 21 days,

- (a) whether in the opinion of the society there are reasonable and probable grounds to believe that a child is in need of protection;
- (b) where a child is taken into protective care, a tentative plan for the welfare of the child; and
- (c) where a tentative plan is drawn up for a child, the steps taken to implement the plan for the welfare of the child.

**O. Reg. 551/85, s.1(2)**

- o The society shall review the case of a child that is not closed, where the child is not taken into protective care, not later than 60 days after the complaint is recorded.

**O. Reg. 551/85, s.1(3)**

#### **4. RESTRICTION ON A SOCIETY'S ADMISSION OF A CHILD TO ITS CARE**

**C.F.S.A. ss.78; 81(1)(h)**

Under the Child and Family Services Act no person is permitted to place a child in the care and custody of a children's aid society, and no society is allowed to take a child into its care and custody except in accordance with the protective intervention provisions of Part III of the Child and Family Services Act or under a temporary care or special needs agreement made under Part II of the Act.

This preserves a prohibition of predecessor legislation.

Unauthorized placement is an offence under the Child and Family Services Act. Any person who contravenes this restriction and any director, officer or employee of a corporation who authorizes, permits or concurs in the corporation's contravention is liable, if convicted, to a fine of up to \$1,000 and/or imprisonment for a term of up to 1 year.

**5. PROHIBITION AGAINST INTERFERENCE WITH A SOCIETY OR  
CROWN WARD OR A CHILD UNDER SOCIETY SUPERVISION**

**C.F.S.A. ss.79; 81(1)(i); 83**

It continues to be an offence for any person:

- a. to induce a society or Crown ward or a child under the supervision of a children's aid society to leave the care of the person with whom the child is placed, or to attempt to so induce the child;
- b. to detain or harbour such child after the person with whom the child is placed or the society demands the child's return;
- c. to interfere with such child or to remove or attempt to remove him from any place; or
- d. to visit or communicate with the person with whom the child is placed, if the purpose is to interfere with the child.

A person who contravenes any of these prohibitions commits an offence under the Child and Family Services Act and is liable, if convicted, to a fine of up to \$1,000 and/or imprisonment for a term of up to 1 year. These penalties are preserved from predecessor legislation.

The Child and Family Services Act further continues the authority of a children's aid society to apply to the Supreme Court of Ontario for an injunction to restrain a person from interfering with the child. Only a children's aid society is authorized to apply for this order under the Child and Family Services Act. The ability to apply for an injunction gives a society an effective weapon with which to meet a situation where urgent action is required (e.g. where there is danger that a child may be removed from the jurisdiction).

The Supreme Court is empowered to vary the injunction order or terminate it altogether on the application of any person.

**6. COMPENSATION FOR THE ABUSED CHILD****C.F.S.A. s.77**

The Child and Family Services Act preserves provisions of predecessor legislation that permitted a civil action for damages or other compensation for a child who has "suffered abuse", if in the opinion of the Official Guardian or the children's aid society responsible for the child, it is in the child's best interests to do so. The Official Guardian may initiate and conduct such proceedings on the child's behalf, or alternatively, the society may do so if the child is in the care and custody of the society.

An application on behalf of an abused child to the Criminal Injuries Compensation Board is not a remedy that has been frequently sought under predecessor legislation, although both the Official Guardian and the Criminal Injuries Compensation Board are receptive to such applications.

The time limit for making application is 1 year from the date of the injury. However, the Criminal Injuries Compensation Board has discretion to extend that limitation period in circumstances where the child would clearly qualify for an award except for the failure to make application within the limitation period.

A hearing before the Criminal Injuries Compensation Board is informal. The task of the applicant is to provide evidence to the Board that the child has been abused, as defined by the Child and Family Services Act. It is not necessary to show that the perpetrator of the abuse has been convicted of an offence arising from the abuse, or that criminal charges were pursued.

For additional information and assistance, contact:

Alan Ingram, Esquire  
Legal Counsel  
Office of the Official Guardian  
180 Dundas Street West  
Toronto, Ontario

Telephone: (416) 965-6602



**Either Substantially New or Revised from Predecessor Legislation**

**7. SOCIETY'S ESTABLISHMENT OF**

**AN INTERNAL COMPLAINT PROCEDURE**

**C.F.S.A. s.64**

In recognition of a valued and accepted front-line practice, the Child and Family Services Act requires each children's aid society to establish a written procedure, approved by a Ministry director, to deal with a complaint regarding the society's services. The society shall make the review procedures available to any person on request, and may consider the advisability of making the information available in a pamphlet or other form for all clients. The Ministry expects to develop guidelines with regard to the complaint procedure.

A necessary component of the procedure is an opportunity for the complainant to be heard by the society's board of directors.

The intent of the new Act is to enable the complainant to attempt to resolve his difficulty in the following manner:

- a. first recourse: the society's internal complaint procedure;
- b. if dissatisfied with the outcome of that review, next recourse: the society's board of directors;
- c. finally, if not satisfied with the board's response, final recourse: a Ministry director.

The Ministry director's review of the complaint is the final recourse contemplated by the Act.

**8. CHILD ABUSE REVIEW TEAMS**

**C.F.S.A. s.69**

**(1) Generally**

The Child and Family Services Act, adopting a widespread practice in the child welfare field, gives legal recognition to and makes mandatory the establishment of a child abuse review team by each children's aid society.

This team affords a forum for the front-line worker and supervisor to present an abused child's need for protective service and to obtain input from the abuse team as to how that service might best be provided. In such crisis situations the availability of that multidisciplinary sharing of experience and expertise in relation to abused children is a particularly valuable resource to assist the front-line protection worker in formulating a plan for the child's care.

No guidelines for child abuse review teams were issued by the Ministry prior to proclamation of the Act.

The Ministry encourages each children's aid society to develop its team in a manner that is most beneficial to its particular needs, taking into account resources available in the community and within the society.

The Ministry of Community and Social Services program supervisor will offer support as requested.

## **(2) Composition**

The location, size of the team and qualifications of persons making up the team is left to the discretion of the society. A society may choose, for example, to invite a member of the local police force to be a member of a team. However, the Child and Family Services Act requires the society to include among the team's membership:

- a. persons who are professionally qualified to perform medical psychological, developmental, educational or social assessments; and
- b. at least 1 legally qualified medical practitioner.

The review team members must choose a chairman from among themselves and the chairman must designate the panel for an individual review.

## **(3) Responsibilities**

It is the responsibility of the review team, either sitting as a whole or in a panel of at least 3 of its members, to review each case of a child referred to

it by the society, where the child may be suffering abuse or has suffered abuse, and where it is the society's intention to return the child to the person who had charge of him at the time of the possible abuse. The team's responsibility for review extends not only to the child who has suffered abuse while in his family home, but also the child who has suffered abuse or may be suffering abuse while in the society's care.

**(4) Disclosure of Information to the Team**

**C.F.S.A. ss.166(1)(g), 163(2)(e)(f)(g)**

The Child and Family Services Act allows a person to disclose to a review team or to any of its members information that is reasonably required for the team's review, even if the information is confidential or privileged. A person who so discloses is protected from civil liability, unless he acts maliciously or without reasonable grounds to believe that the information is reasonably required for the team's review. This discretion to disclose information to the review team is specifically permitted by Part VIII of the Act. This discretion does not, however, override restrictions on information disclosure contained in the Mental Health Act, the Health Disciplines Act and the Public Hospitals Act.

**(5) Mandatory Referrals to the Team**

Where a society has information that a child ordered into its care (either on an interim basis pending full hearing of the protection application or as a society or Crown ward) may have suffered abuse, it is prohibited from returning that child to the care of the person who had charge of him at the time of the possible abuse unless:

- a. the child protection court terminates the order that placed the child in the society's care; or alternatively,
- b. the society has referred the case to its review team and obtained and considered the review team's recommendations.

**9. EXPANDED OPTIONS FOR THE MINISTRY'S**  
**ANNUAL CROWN WARD REVIEW**

**C.F.S.A. ss.62; 37(3)(4)**

The Child and Family Services Act preserves the mechanism initiated by predecessor legislation to ensure that the Ministry of Community and Social Services undertakes a yearly review of certain of its Crown wards. The new Act also expands the options available to the Ministry director responsible for the review.

As in predecessor legislation, the annual review encompasses a Crown ward who meets each of the following criteria:

- a. child is presently a Crown ward;
- b. child was a Crown ward throughout the immediately preceding 24 months;
- c. child's status has not been reviewed in the last calendar year by either the court or the Ministry.

A Ministry director or a person authorized by the director undertakes the review, with arrangements made in cooperation with the children's aid society responsible for the Crown ward's care.

Whereas under predecessor legislation the Ministry director could only direct the society responsible for the child to initiate a status review application in child welfare court, the Child and Family Services Act allows the Ministry director, as an alternative to that option, to give any other direction that in the director's opinion, is in the child's best interests, as defined by the Act.

If the Crown ward is an Indian or native person, the Child and Family Services Act requires the Director to take into consideration the importance of preserving the child's cultural identity, in recognition of the uniqueness of Indian and native culture, heritage and traditions.

The expansion of the Ministry director's authority gives the Ministry more direct responsibility and thereby greater accountability in relation to ongoing planning for its Crown wards.



**10. RESTRICTIONS ON CONTINUING CARE AND MAINTENANCE FOR A  
FORMER CROWN WARD BEYOND AGE 18**

**C.F.S.A. s.67(2)  
O. Reg. 550/85, s.34**

The Child and Family Services Act preserves the discretion of a children's aid society, with the approval of a Ministry director, to continue its provision of care and maintenance to the Crown ward beyond his 18th birthday.

Regulation made under the Child and Family Services Act stipulates as follows:

- o Care and maintenance may be provided to a person who is a former Crown ward in accordance with section 67(2) of the Act where,
  - (a) the person is enrolled as a full-time student at an educational institution and requires financial assistance to continue as a student at the educational institution, or
  - (b) the person is mentally or physically incapacitated.

**O. Reg. 550/85, s.34(1)**

Subsection (1) does not apply to a person who has attained 21 years of age.

**O. Reg. 550/85, s.34(2)**

**11. EXPANSION OF MINISTRY DIRECTOR POWERS RE: TRANSFER OF  
CHILDREN IN SOCIETY CARE OR UNDER SOCIETY SUPERVISION**

**C.F.S.A. ss.73; 37(3)(4)**

**(1) Generally**

Predecessor legislation allowed a Ministry director to direct a society to transfer a Crown ward to the care of a specific society or institution.

The Child and Family Services Act expands that authority to permit a Ministry director to intervene on behalf of:

- a. children in care under temporary care or special needs agreements;



- b. children in temporary care and custody of the society pending full hearing of a protection application;
- c. children subject to the supervision of a society;
- d. children who are society or Crown wards.

This expansion of authority reflects one of the underlying philosophical premises of the Child and Family Services Act; specifically, that the Ministry shares with a children's aid society responsibility for ensuring that the service delivery objectives of the new legislation are met.

## **(2) Scope of the Director's Authority to Transfer**

The Child and Family Services Act empowers a Ministry director to take any of the following specific actions on behalf of those children:

- a. direct that the child be transferred to the care or supervision of another society; or
- b. direct that the child be transferred from one placement to another placement designated by the director.

The Act does not require the director to give formal notice to the affected society, although as a matter of cooperative practice, the director does not act without notice to the society.

## **(3) Criteria by Which the Director is Governed**

In making his decision, the director is to be governed by the best interests of the child, as defined by the Child and Family Services Act. If the issue is the transfer of the child to another placement, the director must also take into account:

- a. the length of time the child has spent in the existing placement;
- b. the views of the foster parents; and

- c. the views and preferences of the child, where they are reasonably ascertainable.
- d. if the child is an Indian or native person, the importance of preserving the child's cultural identity, in recognition of the uniqueness of Indian and native culture, heritage and traditions.

The director, as a matter of practice and policy, also considers the society's assessment of the child's needs and any other clinical data that has impacted on the society's assessment.

#### **(4) Inherent Restrictions on the Director's Authority**

The authority given to a Ministry director by this provision of the Child and Family Services Act is not intended to override a decision of the child protection court in relation to a particular child. For example, if the court orders a child placed with a particular person, subject to society supervision, the director has no authority to change that child's placement. Any such change in placement is the proper subject of a review of the child's status by the court, and the court's ultimate decision. On the other hand, the director may direct that the child's supervision be transferred to another children's aid society (e.g. in the event that territorial jurisdiction of the society is amended).

The Ministry director's authority to transfer should not be interpreted to require the formality of a director's transfer if, for example, 2 societies make mutually satisfactory arrangements for the supervision of a child who has moved with his custodian under the supervision order into the other society's jurisdiction. In such cases, the receiving society usually acts as agent for the society designated by the court to carry out the supervision responsibilities. It is not the intention of the Child and Family Services Act to thwart such cooperative arrangements.

The director's authority to transfer a child does, however, supercede any decision of a residential placement advisory committee. Under the Child and Family Services Act these committees have an advisory function only.

## 12. DEFINITION OF CHILD PROTECTION WORKER

C.F.S.A. ss.37(1)(b); 40(1)(17)

The Child and Family Services Act introduces the term "child protection worker" to define those persons who are at the front-line of protection responsibility. Any of the following persons are "child protection workers" under the new Act:

- a. a local director of a children's aid society;
- b. a person authorized by a local director to commence child protection proceedings;
- c. a Ministry director;
- d. a person authorized by a Ministry director;
- e. a peace officer (which includes a police officer).

The definition encompasses society staff at the front-line of protection responsibility (usually intake, child protection and family services workers). Not encompassed are staff who provide service to children while they are in the care of the society, (i.e., children's services workers, and child care staff) unless these persons are authorized by the society's local director to commence child protection proceedings.

In addition to the general powers of a child protection worker, the new Act gives a peace officer the powers of a child protection worker specifically for the purpose of apprehending children under age 12 who have come into conflict with the law. However, only a children's aid society has authority to initiate a protection application on the child's behalf.

**13. PROHIBITION AGAINST INTERFERENCE**  
**WITH A PROTECTION WORKER**

**C.F.S.A. ss.80(b); 81(1)(j)**

Any person who obstructs or interferes with a protection worker who is acting to protect a child, commits an offence under the Child and Family Services Act. Any attempt to obstruct or interfere with the protection worker is also an offence under the Act.

A person who is convicted of the offence is liable to a fine of up to \$1,000 and/or imprisonment for a term of up to 1 year.

Any director, officer or employee of a corporation who authorizes, permits or concurs in any such contravention by the corporation is also guilty of the offence and liable for the same penalties.

**14. INDEMNITY OF OFFICERS AND EMPLOYEES**  
**OF CHILDREN'S AID SOCIETIES**

**C.F.S.A. ss.40(16); 15(6)**

Predecessor legislation contained no specific protection for the front-line protection worker against civil lawsuits arising from his exercise of the responsibilities assigned to him by the legislation.

The Child and Family Services Act, in response to that deficiency identified by field staff, specifies that no action can be taken against a child protection worker for any act he undertakes in accordance with the law to protect a child allegedly in need of protection, unless the protection worker acts maliciously or without reasonable grounds.

This specific protection augments the general protection from personal liability given to all officers and employees of children's aid societies by section 15 of the Child and Family Services Act. This new provision specifies that no action can be instituted against a society officer or employee for an act he does in good faith in carrying out or intending to carry out his duties. Similarly, no action can be commenced against a society officer or employee for an alleged neglect or default in the carrying out of those duties, provided the officer or employee acts in good faith.

**INTRUSIVE PROCEDURES AND**  
**PSYCHOTROPIC DRUGS UNDER PART VI**

**1. INTRUSIVE PROCEDURES**

**C.F.S.A. ss.123, 124, 125**

**(1) Generally**

The Child and Family Services Act sets out criteria and procedures for the use of an "intrusive procedure" under the Act, and requires a service provider, when these sections are proclaimed:

- a. to be approved by the Ministry for the use of intrusive procedures;
- b. to establish a review team for the purposes of reviewing and approving the use of intrusive procedures.

Intrusive procedures have been defined in broad terms in the Child and Family Services Act with the intent that they be further circumscribed in regulations and/or guidelines. The Act's broad definition provides flexibility necessary to revise and update the definitions consistent with current knowledge regarding this category of practices. Such flexibility would not be possible if narrow definitions were entrenched in the statute itself.

The Act defines an "intrusive procedure" to be any of the following:

- a. a mechanical means of controlling behaviour;
- b. an aversive stimulation technique; or
- c. any other procedures prescribed by the regulations as an intrusive procedure.

A key task in the development of regulations and standards is the identification and differentiation of intrusive procedures from other techniques employed by a service provider to manage a child's behaviour.



The Ministry, in consultation with professionals with specific expertise in this area, will develop guidelines and/or regulations to assist service providers. Subsequent work will be undertaken to determine the ongoing viability of the guidelines and regulations. Guidelines developed by the Ministry should ensure that the use of intrusive procedures can be incorporated appropriately into the approved service provider's case management system and in the child's plan for care.

## **(2) Criteria for Use of an Intrusive Procedure**

It is the responsibility of the service provider to ensure that:

- a. he has been approved as a provider who may use intrusive procedures in his provision of service to children;
- b. he has established a review team for the purpose of monitoring and approving the use of intrusive procedure in individual cases:
  - (i) the particular intrusive procedure contemplated is specified in the Minister's approval; **C.F.S.A. s.125(3)(a)**
  - (ii) the intrusive procedure is used only in accordance with any conditions and limitations set out in the Minister's approval; **C.F.S.A. s.125(3)(b)**
  - (iii) the service provider has obtained the approval of his review team to use the intrusive procedure within the 30-day period immediately preceding the service provider's contemplated use of the intrusive procedure. **C.F.S.A. s.125(3)(c)**

## **(3) Emergency Use**

A service provider approved to use intrusive procedures may administer a procedure to a child in an emergency if:

- a. the approved service provider has reasonable grounds to believe that any delay in administering the intrusive procedure would cause the child or another person serious mental or physical harm; **C.F.S.A. s.125(6)(a)**

- b. the intrusive procedure contemplated for the child is specified in the Minister's approval; **C.F.S.A. s.125(6)(b)**
- c. a child over age 16 either consents to the use of the intrusive procedure or apparently does not have the capacity to make that decision; **C.F.S.A. s.125(6)(c)**
- d. the parent of the child under age 16, (or the children's aid society, if the child is in the custody of the society) either consents to the use of the intrusive procedure or is not immediately available to consent. **C.F.S.A. s.125(6)(d)**

It is the responsibility of the service provider to further ensure:

- a. that an intrusive procedure in an emergency situation is not administered to a child for a period exceeding 72 hours without the approval of the service provider's review team;
- b. if the emergency requires the use of an intrusive procedure for a child, that the approval of the review team is sought as soon as possible and within 72 hours of the first use of the intrusive procedure; **C.F.S.A. s.125(6)**
- c. that he abides by the ruling of the review team with respect to any further use of the intrusive procedure. **C.F.S.A. s.125(7)**

The consent of a parent is not a prerequisite in an emergency situation.

#### **(4) Seeking the Minister's Approval**

The Act prohibits use of an intrusive procedure by any one other than a service provider approved for that purpose. The Minister may specify the form of intrusive procedures and attach terms and conditions to its use. The Minister's approval may be revoked, suspended or amended at any time, provided the Minister gives notice to the service provider of his intended action, stating his reasons.

**(5) Seeking the Approval of a Review Team to the Use of Intrusive Procedures**

**C.F.S.A. ss.123, 127(1)(2)**

A service provider who is approved to use intrusive procedures must establish an interdisciplinary review team to monitor their use and further must seek the approval of his review team before he administers an intrusive procedure to a child.

That team reviews the child's need, either approving or refusing the proposed use of an intrusive procedure for the child. The team also reviews any recommendation that a child in the service provider's care undergo:

- a. non-therapeutic medical or chemical experimentation;
- b. psychosurgery;
- c. non-therapeutic sterilization;
- d. electro-convulsive therapy.

The review team must be composed of two or more persons employed by the service provider and at least one other person not employed by the service provider who is approved by the Minister. The team may include a legally qualified medical practitioner. If the review concerns the therapies outlined above, one of the members of the team must be a legally qualified medical practitioner. There are no upper limits on the size of the teams.

For purposes of reviewing intrusive procedures, a panel of at least 3 review team members is required.

**(6) Criteria for Approval of the Review Team**

The review team's approval must be obtained in advance of the use of the intrusive procedures, unless the situation is an emergency, and must not be more than 30 days old at the time the intrusive procedure is used.

The review team cannot approve the use of an intrusive procedure for a particular child unless the service provider satisfies the review team of the following:

- a. if the child is 16 years of age or more, that the child consents to its use;
- b. if the child is less than 16 years of age, that the child's parent consents to its use or alternatively where the child is in the care of a children's aid society, the society consents to its use;
- c. that the child's behaviour warrants its use;
- d. that at least one less intrusive alternative therapy to improve the child's behavior has been attempted without success;
- e. that no other less intrusive alternative is practicable; and
- f. that there are reasonable grounds to believe that the procedure would improve the child's behaviour.

Where the child is under 16 years of age or lacks capacity to understand and appreciate the nature and consequences of what is happening, the review team must consider the child's views and preferences, where they can be reasonably ascertained.

The review team must provide the service provider with a report for every review conducted.

#### **(7) Reports Required from the Interdisciplinary Review Team**

In addition to determining the appropriateness of an intrusive procedure for a particular child, the interdisciplinary review team is required to make reports. It must report to the service provider on every review it conducts. It is also asked to make reports of its activities to the Minister, or his delegate, on its activities at prescribed intervals, to keep the Ministry informed as to the number of reviews conducted, the decisions made and the types of procedures involved.

**(8) Exemption for Restraints Necessary to Transport Young Offenders**

A service provider may use restraints that are reasonably necessary to transport a young offender detained or committed to custody under the Young Offenders Act (Canada) without contravening the provisions relating to intrusive procedures.

**2. PSYCHOTROPIC DRUGS**

**C.F.S.A. s.126**

**(1) Generally**

The Child and Family Services Act also provides specific criteria regarding consent to the use of psychotropic drugs. The administration of psychotropic drugs to children is a very serious intervention and the legislation places particular emphasis on the service provider's responsibility to ensure that fully informed consents have been obtained.

As it may not be the service provider who is actually administering the drug, he will have to ensure that policies and procedures are in place to ensure compliance with the Child and Family Services Act provisions.

A psychotropic drug is defined in the Act as a drug or combination of drugs prescribed in regulations, as a psychotropic drug.

**(2) Criteria for Use of a Psychotropic Drug**

**C.F.S.A. s.126(1)(2)(3)**

It is the responsibility of the service provider to fulfill the following requirements before any prescribed psychotropic drug is administered to a child in the service provider's care:

- a. that the child over age 16 has given his consent, if he has capacity to do so;
- b. that the parent of a child under age 16 has given consent, or alternatively, if the child, is in the custody of a children's aid society, the society has given its consent;

**C.F.S.A. s.126(1)**



- c. that the service provider has considered the views and preferences of the child under age 16 or the child who lacks capacity, if those views can be reasonably ascertained, and the situation is not an emergency;

**C.F.S.A. s.126(3)**

- d. that the consent clearly identifies the psychotropic drug contemplated, and specifies:

- (i) what condition the psychotropic drug is intended to alleviate;
- (ii) the range of intended dosages;
- (iii) risks and possible side effects associated with the psychotropic drug, and how they vary with different dosages; and
- (iv) the frequency with which and the period of time during which the psychotropic drug is to be administered.

**(3) Emergency Use**

**C.F.S.A. s.126(4)(5)**

The legislation provides that, under certain circumstances, a service provider may administer a psychotropic drug to a child on an emergency basis for a period of up to 72 hours without obtaining the necessary consents. In order to administer the drugs on an emergency basis, there must be reasonable grounds for the service provider to believe that:

- a. delay in the administration of a psychotropic drug to the child in the service provider's care would cause the child or another person serious mental or physical harm, and
- b. no less restrictive course of action would prevent the harm;
- c. if the child is 16 years of age or more, the child apparently does not have capacity; and
- d. if the child is less than 16 years of age, the child's parent or, where the child is in a society's lawful custody, the society, is not immediately available;
- e. administration of the psychotropic drug in emergency situations does not continue beyond a 72-hour period without the consents of the child,

parent and society as required. Those consents are to be sought as soon as possible after the first administration of the psychotropic drug.

**3. NON-THERAPEUTIC MEDICAL OR CHEMICAL EXPERIMENTATION, PSYCHOSURGERY, NON-THERAPEUTIC STERILIZATION OR ELECTRO-CONVULSIVE THERAPY** **C.F.S.A. s.127**

It is the responsibility of the service provider to ensure that no child in the care of, or regularly receiving services from a service provider, undergo any of these procedures, unless:

- a. three members of the interdisciplinary review team, established by the service provider, one of whom must be legally qualified medical practitioner, have reviewed the matter, and advised both the child's parent(s) (or the children's aid society, where the child is in the society's custody) and the service provider of the review team's opinion as to the appropriateness of the recommended procedure;
- b. that no such procedure is carried out in premises where the approved service or service purchased by an approved agency is provided.

**4. ESTABLISHMENT OF PROFESSIONAL ADVISORY BOARD TO ASSIST THE MINISTER** **C.F.S.A. s.128**

The Child and Family Services Act authorizes the Minister to establish a Professional Advisory Board, composed of physicians and other professionals who have special knowledge about the use of intrusive procedures and psychotropic drugs, who have demonstrated an informed concern for child welfare and the interests of children, and are not employed by the Ministry, to perform the following functions:

- a. advise the Minister regarding the regulation of procedures as intrusive procedures and making, amending, suspending or revoking approvals of service providers to use intrusive procedures;

- b. investigate and review the use of intrusive procedures and psychotropic drugs and make recommendations to the Minister; and
- c. review practices of service providers regarding secure isolation, intrusive procedures and psychotropic drugs and make recommendations to the Minister.

**5. RIGHT TO REVIEW BY THE PROFESSIONAL ADVISORY BOARD**

**C.F.S.A. s.129**

In addition, any person may ask the Minister to refer to the Professional Advisory Board the use of secure isolation, an intrusive procedure, or a psychotropic drug with regard to a specific child. The Board must then investigate and review the matter.

## **RESIDENTIAL PLACEMENT ADVISORY COMMITTEES**

### **1. GENERALLY**

**C.F.S.A. s.34(6)(a)**

When sections 34-36 are proclaimed, the Child and Family Services Act introduces a review mechanism to monitor certain placements of children in residential care, to be undertaken by a body known as the Residential Placement Advisory Committee.

A Residential Placement Advisory Committee is established by the Minister and composed of:

- a. persons engaged in providing services;
- b. other persons who have demonstrated an informed concern for the welfare of children;
- c. one representative of the Ministry; and
- d. if the Minister wishes, another person or persons, including a representative of a band or native community, whom the Minister considers appropriate.

The territorial jurisdiction of each committee is established by the Minister.

### **2. THE COMMITTEE'S RESPONSIBILITIES**

**C.F.S.A. s.34(4)(6)**

The Child and Family Services Act entrusts each committee with the following duties:

- a. to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential services and alternatives to residential service;
- b. to conduct the reviews;

- c. to review or re-review at any time, on its own initiative, at a person's request, or at the request of the Minister, an existing or proposed residential placement of a child;
- d. in consultation with the children's aid society caring for a child under the authority of an agreement, to name a person to maintain contact with and be involved in the child's case, if the person who had custody does not do so; **C.F.S.A. s.29(a)**
- e. such further duties prescribed by the regulations;
- f. to report its activities to the Minister, whenever the Minister requests.

### **3. PLACEMENTS THE COMMITTEE IS REQUIRED TO REVIEW**

#### **(1) Placements in an Institution Intended to Last or Actually Lasting 90 Days or Longer** **C.F.S.A. ss.26(6); 34(5)**

An institution is defined as:

- a. a children's residence that has the capacity to provide residential service to 10 or more children at a time; or
- b. a part of a building or a group of buildings sharing common grounds or premises that has a residential service capacity for 10 or more children at a time and has been designated as an institution by a Ministry director for the purposes of placement review.

The review of a child's placement in an institution is to be undertaken as soon as possible after the child is admitted into residence and in any event within 45 days of admission into the institution, and thereafter at least once every 9 months.

At the time of proclamation, placements of children already residing in an institution as defined by the Act, must be reviewed by an advisory committee within 12 months of the establishment of the committee or within such longer period as the Minister allows.



**(2) Placements Referred to RPAC by the Minister****C.F.S.A. s.34(6)(c)**

A review is required for any existing or proposed placement of a child referred to a committee by the Minister, regardless of the capacity of the residential service (i.e. even if it is not an institution as defined by the Act). The committee must undertake that review within 30 days of the referral.

**(3) Child 12 or Older Objecting to Residential Placement****C.F.S.A. s.34(6)(b)**

The Child and Family Services Act gives the child 12 or over who objects to his placement in residential care, a right to have the placement reviewed by a Residential Placement Advisory Committee. This entitlement to review is a right given to each child in care, including children residing in foster homes, provided that the child is 12 years of age or over. An advisory committee must review any residential placement to which a child aged 12 or older objects, regardless of the capacity of the residential service (i.e. even if it is not an "institution" as defined by the Act). The review is to take place between 14-21 days of the child's placement.

**4. PLACEMENTS EXEMPTED****C.F.S.A. s.34(1)**

The following placements are excluded from a review:

- a. placements made under Part IV (Young Offenders);
- b. placements in secure treatment programs under Part VI (Extraordinary Measures);
- c. placements with persons who are neither service providers nor foster parents; and
- d. maternity homes.

**5. ESSENTIALS OF THE REVIEW****C.F.S.A. s.34(9)**

The review is to be informal, conducted in the absence of the public, and with the assistance and cooperation of the service provider.

The advisory committee may in the course of its review, inform itself by any or all of the following means:

- a. interview the child, members of the child's family and any representatives of the child and family;
- b. interview persons engaged in providing services and other persons who may have an interest in the matter or may have information that would assist the advisory committee;
- c. examine documents and reports that are presented to the committee; and
- d. examine records of the child and of members of the child's family, that are disclosed to the committee in accordance with that Part VIII of the Act, Confidentiality of and Access to Records (see page 56).

**6. THE REVIEW COMMITTEE'S TASKS****C.F.S.A s.34(11)**

The task of the committee is to:

- a. determine whether the child has a special need;
- b. consider what programs are available for the child in the residential placement or proposed residential placement, and whether a program available to the child is likely to benefit him;
- c. consider whether the residential placement or proposed residential placement is appropriate for the child in the circumstances;
- d. if it considers that a less restrictive alternative to the placement would be more appropriate for the child in the circumstances, specify that alternative;

- e. consider the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity; and
- f. where the child is an Indian or native person, consider the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity.

## **7. DISTRIBUTION OF THE COMMITTEE'S RECOMMENDATIONS**

**C.S.F.A. s.35(1)**

The committee's recommendations must be shared with the following persons:

- a. the child, where it is reasonable to expect him to understand;
- b. the service provider;
- c. any representative of the child;
- d. the child's parent or a children's aid society where the child is in the custody of the society; and
- e. if the child is an Indian or native child, a representative chosen by the child's band or native community.

If the committee considers that a less restrictive service would be more appropriate for a child, that particular service recommended is to be specified in the committee's report. Within 30 days of the review, the committee must also report its findings and recommendations to the Minister.

## **8. FURTHER REVIEW BY CHILDREN'S SERVICES REVIEW BOARD**

**C.F.S.A. s.36**

If the child over age 12 is dissatisfied with the recommendations of the advisory committee, he may apply to the Children's Services Review Board for further review. The child 12 or over may also invoke this review if the advisory committee's recommendation is not followed. This can be a more formal review.

The Board must conduct a review with respect to the child's application for further review and must advise the child within 10 days of receiving the child's request whether it intends to hold a formal hearing. If it intends to hold a hearing the following persons are parties:

- a. the child;
- b. the child's parent or alternatively, the children's aid society if the child is in the custody of the society;
- c. if the child is an Indian or native child, a representative chosen by the child's band or native community; and
- d. any other person the Board specifies.

The Board is a decision making body and after conducting a review, may:

- a. order that the child be transferred to another residential placement, if the Board is satisfied that the other residential placement is available;
- b. order that the child be discharged from the residential placement, or
- c. confirm the existing placement.

## THE LICENSING PROCESS

### **1. PERSONS AND RESIDENCES AFFECTED      C.F.S.A. ss.175(a)(c)(d); 176**

The Child and Family Services Act continues the thrust of predecessor law in requiring the licensing of individuals or corporations who wish to establish, operate or maintain a "children's residence".

"Children's residence" under the new Act means:

- a. a parent-model residence where 5 or more children not of common parentage live and receive residential care ("parent model" residence is defined as part or all of a building or group of buildings where not more than 2 adults live and provide care for children on a continual basis); or
- b. a staff-model residence where 3 or more children not of common parentage live and receive residential care by adults employed on the basis of scheduled shifts ("staff model" residence is defined as part or all of a building where adults are employed to care for children on the basis of scheduled shifts).

Parent model or staff model residences supervised or operated by children's aid societies are not exempted, and thus require a licence issued under Part IX of the Act. The licence is issued by a Ministry director.

The Act also requires the authority of a licence to provide, directly or indirectly, residential care for three or more children not of common parentage, if that care is to be provided in places that are not children's residences.

### **2. RESIDENCES THAT DO NOT REQUIRE A LICENCE      C.F.S.A. s.175(a)**

The licensing requirements of the Child and Family Services Act do not affect the following:

- a. houses licensed under the Private Hospitals Act;



- b. day nurseries as defined in the Day Nurseries Act;
- c. recreational camps under the Health Protection and Promotion Act, 1983;
- d. homes for special care under the Homes for Special Care Act;
- e. schools as defined in the Education Act;
- f. hostels intended for short-term accommodation;
- g. hospitals that receive financial aid from the provincial government;
- h. group homes and similar facilities funded by the Ministry of Correctional Services and receiving no financial assistance from the Ministry of Community and Social Services.

### **3. FAILURE TO COMPLY**

**C.F.S.A. ss.176(1); 189**

It is an offence under the Child and Family Services Act to establish, operate or maintain a children's residence without a licence or to directly or indirectly provide residential care for 3 or more children not of common parentage in places that are not children's residences. Contravention of the law is punishable, on conviction by the Provincial Offences Court, by a fine of up to \$1,000 per day for each day on which the offence continues, and/or imprisonment for a term of up to one year.

Liability extends to directors, officers or employees of a corporation who authorize, permit or concur in such contravention by the corporation. Any person, including a child's parent who permits care of the child in an unlicensed children's residence or by a person who is required to have a licence and does not, is liable to prosecution.

The Child and Family Services Act empowers a Ministry director to apply to the Supreme Court of Ontario for an injunction prohibiting any person who requires a licence from operating without one. Failure to comply with the injunction order is an offence under the Child and Family Services Act,

injunction order is an offence under the Child and Family Services Act, punishable on conviction by a fine of up to \$2,000. Liability extends to any director, officer or employee of a corporation who authorizes, permits or concurs in the corporation's contravention of the court's direction.

#### **4. ENTITLEMENT TO A LICENCE**

**C.F.S.A. s.176(3)**

The Child and Family Services Act gives an applicant who complies with the requirements of the Act and its regulations a statutory entitlement to the licence, subject to any conditions that may be attached by the Ministry director. The Act does not permit the licensing of a partnership or association of persons.

#### **5. AVAILABILITY OF A PROVISIONAL LICENCE**

**C.F.S.A. s.178(6)**

An applicant who requires time to satisfy the licensing requirements of the Child and Family Services Act may ask a Ministry director to issue a provisional licence for a specified period. Issuance of a provisional licence is in the discretion of the Ministry director, who also has discretion to attach conditions to the provisional licence.

#### **6. REFUSAL TO ISSUE A LICENCE**

**C.F.S.A. s.178**

A Ministry director may refuse to issue a licence in circumstances specified by the new Act. Grounds for refusal are essentially the following:

##### **(1) Individual Applicants**

- a. if, in the director's opinion, the applicant or any of his employees is not competent to responsibly carry on the activity that requires the licence;
- b. if the applicant's past conduct or that of any of his employees gives the director reasonable grounds to believe that the activity for which the licence is required will not be carried on responsibly;

- c. if, in the director's opinion, the premises proposed for residential care do not comply with the requirements of the law.

**(2) Corporate Applicants**

- a. if, in the director's opinion, the applicant corporation or any of its officers or directors is not competent to responsibly carry on the activity that requires the licence;
- b. if the applicant's past conduct or that of any of his employees gives the director reasonable grounds to believe that the activity for which the licence is required will not be carried on responsibly;
- c. if the past conduct of an officer or director of the corporation gives the director reasonable grounds to believe that the activity for which the licence is required will not be carried on responsibly;
- d. if the premises proposed for residential care do not comply with the requirements of the law.

**7. NON-TRANSFERABLE NATURE OF THE LICENCE      C.F.S.A. s.176(7)**

The Act prohibits any transfer of the licence.

**8. LICENSEE'S RIGHTS IF DISSATISFIED WITH CONDITIONS ATTACHED TO A LICENCE      C.F.S.A. s.181**

If the licensee is dissatisfied with the terms and conditions attached to the licence he is entitled to a review of the director's decision by the Children's Services Review Board (C.S.R.B.). This review is initiated by mailing or delivering to the director and to the C.S.R.B. within 15 days of receipt of the licence, the applicant's written request for a hearing.

**9. DEEMED RECEIPT OF LICENCE****C.F.S.A. s.181(3)**

For the purpose of calculating the time period within which a licensee may make application to the C.S.R.B. for review of a director's decision to attach conditions to a licence, the Child and Family Services Act deems the licensee to have received the licence 10 days after the day it is mailed to him.

The Board has discretion to extend this 10-day period either before or after its expiry, if the applicant puts before the Board reasonable grounds to seek that extension, and if it appears to the Board that there are reasonable grounds for granting the relief that is sought. For example, the licensee may establish to the Board's satisfaction that he did not receive the licence 10 days after mailing, or that he did not receive it until a later date because of illness, his absence, accident or other cause beyond his control. The Board may give such directions it considers proper in connection with any extension it grants.

**10. APPLICANT'S RIGHTS IF MINISTRY DIRECTOR REFUSES TO ISSUE THE LICENCE****C.F.S.A. s.180****(1) Right to Notice****C.F.S.A. s.180(1)(2)**

If the Ministry director intends to refuse to issue a licence, The Child and Family Services Act requires written notice to the applicant of the director's intention, together with his written reasons. The notice must set out the applicant's right to a hearing by the Children's Services Review Board.

**(2) Right to Hearing by Children's Services Review Board****C.F.S.A. s.180(2)**

If within 10 days of receipt of the notice, or such further period as the Board allows, the applicant mails or delivers written notice to the Ministry director and to the Children's Services Review Board of his request for a hearing, the Act requires the Board to review the director's proposed action and the reasons for it.

The Board also has discretion to extend this 10-day period, either before or after its expiry, if the applicant presents reasonable grounds for seeking that extension, and if it appears to the Board that there are reasonable grounds for granting the relief that is sought. The Board may attach conditions as it considers proper to the extension it grants.

## **11. ENTITLEMENT TO RENEWAL OF THE LICENCE C.F.S.A. s.176(5)(6)**

### **(1) Generally**

The Child and Family Services Act specifies that a licensee who applies for renewal of his licence in accordance with the law is entitled to have his licence renewed, subject to any conditions that may be attached by the Ministry director, unless circumstances are present that preclude such renewal.

### **(2) Provisional Renewal**

The Child and Family Services Act allows the Ministry director to provisionally renew the licence for a period that he considers necessary, where the licensee requires time to meet the requirements for renewal. The director may also attach terms and conditions to his provisional renewal.

### **(3) Continuation of Licence Pending Renewal C.F.S.A. s.182(2)**

If the licensee has made proper application for renewal, the Child and Family Services Act deems the licence to continue until the renewal is granted. If the director intends to refuse the renewal, the licence continues until the time for requesting review by the C.S.R.B. has expired or, alternatively, if the licensee does request a review by the C.S.R.B., the licence continues until the Board has made its decision.



## 12. REVOCATION OF OR REFUSAL TO RENEW A LICENCE

C.F.S.A. s.179; 189

A director may refuse to renew a licence in circumstances specified by the Act. Grounds for refusal to renew are essentially the following:

### (1) Individual Licensees

- a. if the licensee or any of his employees has contravened the Child and Family Services Act or its regulations or any other Act or regulations that govern the activity for which the licence is required;
- b. if the licensee has knowingly permitted a person under his control or direction or associated with him to engage in such contravention;
- c. if the licensee has contravened a specific term or condition of the licence;
- d. if the licensee has knowingly permitted a person under his control or direction or associated with him to contravene a specific term or condition of the licence;
- e. if, in the director's opinion, the licensee's premises do not comply with the requirements of the law;
- f. if, in the director's opinion, the licensee's activity is carried on in a manner prejudicial to the health, safety or welfare of the children;
- g. if, in the director's opinion, a person has made a false statement in the application for the licence, in the application for its renewal or in any report required in connection with the licenced activity;
- h. if there has been a change in the applicant's employees, officers or directors that would give the Ministry director grounds to refuse to issue the licence in the first instance.

**(2) Corporate Licensees**

- a. if an officer or director of the corporation or any of his employees has contravened the Child and Family Services Act or its regulations or any other Act or regulations that govern the activity for which the licence is required;
- b. if an officer or director of the corporation has knowingly permitted a person under his control or direction or associated with him to do so;
- c. if an officer or director of the corporation has contravened a specific term or condition of the licence;
- d. if an officer or director of the corporation has knowingly permitted a person under his control or direction or associated with him to contravene a specific term or condition of the licence;
- e. if, in the director's opinion, the corporate licensee's premises do not comply with the requirements of the law;
- f. if, in the director's opinion, the corporate licensee's activity is carried on in a manner prejudicial to the health, safety or welfare of the children;
- g. if, in the director's opinion, a person has made a false statement in the application for the licence, in the application for its renewal or in any report required in connection with the licensed activity;
- h. if there has been a change in the applicant's employees, officers or directors that would give the Ministry director grounds to refuse to issue the licence in the first instance.

**13. LICENSEE'S RIGHTS IF DIRECTOR REVOKES OR REFUSES TO RENEW**

**C.F.S.A. s.180**

If the Ministry director intends to revoke or refuse the renewal, the licensee is entitled to written notice of that proposal, together with the director's written reasons, and a review of the director's decision by the Children's Services Review Board.

**14. DIRECTOR'S AUTHORITY TO PROVISIONALLY SUSPEND A LICENCE****C.F.S.A. s.183****(1) Statutory Criteria Requiring Suspension****C.F.S.A. s.183(1)**

If, in the director's opinion, there is an immediate threat to the health, safety or welfare of the children as a result of the manner in which the children's residence is operated or the manner in which the residential care is being provided, the Child and Family Services Act empowers the director to provisionally suspend the licence without a hearing. The provisional suspension takes effect on the date the licensee receives the director's notice of provisional suspension.

**(2) Licensee's Right to Review of Provisional Suspension****C.F.S.A. s.183(2)(4); 180(2)(3)(4)**

If the Ministry director intends to provisionally suspend a licence, he must give written notice to the licensee setting out the grounds upon which he is taking action. If, within 10 days of receipt of the notice, or such further period as the Children's Services Review Board allows, the applicant mails or delivers written notice to the director and to the C.S.R.B., indicating his request for a hearing, the Act requires the Board to review the director's action and the reasons for it.

The Board has discretion to extend this 10-day period either before or after its expiry, if the applicant puts before the Board reasonable grounds to seek that extension and if it appears to the Board that there are reasonable grounds for granting the relief which is sought. The Board may give directions as it considers proper to the extension it grants.

**(3) Ministry Director's Right to Seek an Injunction****C.F.S.A. s.188**

A director may apply to the Supreme Court of Ontario for an injunction prohibiting the individual or corporation from carrying on any activity that requires a licence while the licence is suspended.

It is an offence to contravene the injunction, punishable on conviction by a fine of up to \$2,000. Any director, officer or employee of a corporation who authorizes, permits or concurs in the corporation's contravention of the court's direction is as liable as if he had committed the offence himself.

The Act allows any person to apply to the court for an order varying or discharging the injunction.

**15. LICENSEE'S RESPONSIBILITY IF LICENCE REVOKED C.F.S.A. s.186**

If the licence is revoked in accordance with Part IX, the Child and Family Services Act requires the licensee to deliver to the Ministry the licence and all records in the licensee's possession or control that relate to the children to whom services were being provided.

**16. RESPONSIBILITY OF PARENT IF LICENCE REVOKED OR SUSPENDED C.F.S.A. s.186(2)**

It is the responsibility of each parent of a child in the residence that has had its licence revoked to arrange for the child's removal as soon as practicable. The Child and Family Services Act gives the Minister discretion to assist in finding an alternative placement for the child.

**17. MINISTER'S RIGHT TO OCCUPY AND PROVISIONALLY MANAGE THE RESIDENCE IF LICENCE REVOKED OR SUSPENDED C.F.S.A. s.187**

Once the director's notice has been served on the licensee, the Minister may apply without notice to the licensee to the District Court for an order authorizing the Minister to occupy the licensee's premises, and manage the residential program on an interim basis pending the outcome of the C.S.R.B. hearing or until alternative accommodation can be found for the children. The minister must satisfy the presiding judge of the District Court that the health, safety or welfare of the children requires such action.



If the court makes the order, the Minister may immediately occupy and operate the premises or arrange for such operation, for a period that is not to exceed 6 months.

### **18. OFFENCES RELATED TO LICENSING**

**C.F.S.A. s.189**

The following actions are offences under the Child and Family Services Act, punishable on conviction by a fine of up to \$1,000. for each day on which the offence continues, or to imprisonment for a term of not more than 1 year, or to both:

- a. operating a children's residence without a licence; **C.F.S.A. s.176(1)**
- b. contravention of a term or condition of a licence relating to the maximum number of children to be cared for in a children's residence or other place where residential care is provided under the authority of a licence;
- c. causing a child to be cared for in a children's residence operated by a person who is not licensed under Part IX of the Act, or in another place where residential care is provided by a person who is required to be but is not licensed to provide residential care under Part IX; or
- d. where the child's parent or a person under a legal duty to provide for the child permits the child to be cared for in an unlicensed children's residence or other place that requires a licence under Part IX of the Act.

A director, officer or employee of a corporation who authorized permits or concurs in any such act by the corporation is also liable to prosecution.

It is also an offence:

- a. to knowingly hinder a program supervisor in the performance of his duties, knowingly give false information about the premises or services or attempt to do so;



- b. as a licensee or person in charge of a licensed premises, a children's residence or a place where a child receives residential care, to knowingly refuse to give a program supervisor access to the books and records of the licensee that the program supervisor requires in order to assess the licensee's compliance with the Child and Family Services Act and its regulations;
- c. to knowingly furnish false information in an application under Part IX or in a statement, report or return required under Part IX or the regulations; or
- d. to fail to comply with an order or direction made by a court under Part IX.

Any person and any director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention, furnishing or failure by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

**REGULATIONS AFFECTING CHILDREN'S RESIDENCES, OPERATORS OF  
FOSTER HOMES AND PRIVATE ADOPTION LICENSEES**      **O. Reg. 550/85**

**1. APPLICABILITY**

The provisions that follow, except where otherwise indicated, apply in respect of an application that is made on or after November 1, 1985 for a licence or renewal of a licence:

- o to establish, operate or maintain a residence; or
- o to provide residential care for 3 or more children not of common parentage; or
- o to place children for adoption. **O. Reg. 550/85, s.55**

**2. DOCUMENTATION TO BE FILED  
IN SUPPORT OF A LICENCE APPLICATION**

Every person applying for a licence to establish, operate or maintain a residence shall file with a director evidence that the premises used or to be used as a residence comply with:

- (a) the laws respecting the health of inhabitants of the area in which the premises are located;
- (b) any rule, regulation, direction or order of the local board of health and any direction or order of the local medical officer of health;
- (c) any by-law of the municipality in which the premises are located or other law for the protection of persons from fire hazards;
- (d) any restricted area, standard of housing or building by-law passed by the municipality in which the premises are located pursuant to Part III of the Planning Act, 1983 or any predecessor thereof;

- (e) the requirements of Ontario Regulation 583/83 (Building Code), where applicable.
- (f) the requirements of Ontario Regulation 730/81 (Fire Code), where applicable. **O. Reg. 550/85, s.57**

### **3. FORMS**

An application for a licence or a renewal of a licence to establish, operate or maintain a residence under clause 176(1)(a) of the Act shall be made to a director in Form 17. **O. Reg. 550/85, s.58(1)**

An application for a licence or a renewal of a licence to provide residential care under clause 176(1)(b) of the Act shall be made to a director in Form 18. **O. Reg. 550/85, s.58(2)**

An application for a licence or a renewal of a licence to place children for adoption under subsection 176(2) of the Act shall be made to a director in Form 19. **O. Reg. 550/85, s.58(3)**

A licence to establish, operate or maintain a residence shall be in Form 20. **O. Reg. 550/85, s.59(5)**

A licence to provide residential care shall be in Form 21. **O. Reg. 550/85, s.59(6)**

A licence to place children for adoption shall be in Form 22. **O. Reg. 550/85, s.59(7)**

A provisional licence to establish, operate or maintain a residence shall be in Form 23. **O. Reg. 550/85, s.59(8)**

A provisional licence to provide residential care shall be in Form 24. **O. Reg. 550/85, s.59(9)**

A provisional licence to place children for adoption shall be in Form 25. **O. Reg. 550/85, s.59(10)**

#### **4. ADDITIONAL INFORMATION REQUIRED**

An application for a licence or renewal of a licence shall be accompanied by such other information as a director considers necessary to enable the director to determine whether the applicant would, if licensed, be in compliance with the Act and the Regulations. **O. Reg. 550/85, s.58(4)**

#### **5. FEES**

The fee payable by an applicant on application for a licence or renewal of a licence is,

- (a) \$100 payable every 3 years for each region in which an applicant intends to establish, operate or maintain a residence; and
- (b) \$100 payable every 3 years for each region in which an applicant intends to provide residential care. **O. Reg. 550/85, s.58(11)**

For the purposes of subsection 58(11), the following regions are designated:

- 1. The Northern Region, being the territorial districts of Algoma, Cochrane, Kenora, Manitoulin, Nipissing, Parry Sound, Rainy River, Sudbury, Thunder Bay, Timiskaming, The Regional Municipality of Sudbury and The District of Municipality of Muskoka.
- 2. The Central Region, being the counties of Dufferin and Simcoe, The Municipality of Metropolitan Toronto and the regional municipalities of York, Peel and Halton. (Halton is incorrectly listed in the regulations as part of the Southwestern Region.)
- 3. The Southwestern Region, being the counties of Brant, Bruce, Elgin, Essex, Grey, Huron, Kent, Lambton, Middlesex, Oxford, Perth and Wellington and the regional municipalities of Haldimand-Norfolk, Niagara, Hamilton-Wentworth, and Waterloo.
- 4. The Southeastern Region, being the counties of Frontenac, Hastings, Lanark, Lennox and Addington, Northumberland, Peterborough, Prince

Edward, Renfrew and Victoria, the County of Haliburton, the united counties of Leeds and Grenville; Stormont, Dundas and Glengarry; and Prescott and Russell; and the regional municipalities of Durham, and Ottawa-Carleton.

**O. Reg. 550/85, s.56**

Section 58(11) does not apply to an applicant for a licence or a renewal of a licence in a region where the applicant has within the 3 year period referred to in subsection (11) already paid the prescribed fee.

**O. Reg. 550/85, s.58(12)**

The fee payable by an applicant on application for a licence or renewal of a licence to place children for adoption is \$100 payable every 3 years.

**O. Reg. 550/85, s.58(13)**

## **6. TERM OF LICENCE**

A director may issue or renew a licence for such period, not to exceed one year, as the director determines is proper in the circumstances.

**O. Reg. 550/85, s.58(14)**

## **7. REFUND OF LICENCE FEE**

A director may refund to an applicant a fee paid under this section with respect to a licence or renewal thereof that is not issued to the applicant.

**O. Reg. 550/85, s.58(15)**

## **8. AVAILABILITY OF LICENCE FOR INSPECTION**

A licence or a provisional licence to operate and maintain a residence shall be kept on the premises of the residence by the licensee who shall ensure that the licence is available for inspection by any person.

**O. Reg. 550/85, s.58(16)**

A licence or a provisional licence to provide residential care or to place children for adoption shall be kept on the premises of the licensee who shall ensure that the licence is available for inspection by any person.

**O. Reg. 550/85, s.58(17)**



## **9. INSPECTION OF THE PREMISES**

Upon application for a licence or renewal of a licence to establish, operate or maintain a residence or to provide residential care, a director may inspect or cause to be inspected the residence or any premises where residential care is to be provided by the applicant for the purpose of determining the eligibility of the applicant for the licence or renewal. **O. Reg. 550/85, s.59(1)**

## **10. MAXIMUM NUMBER OF CHILDREN IN A RESIDENCE**

The director shall, at the time of issuing a licence or renewal of a licence to operate a residence, include in the licence the maximum number of children for whom care may be provided by the licensee. **O. Reg. 550/85, s.59(2)**

A licensee shall not admit to a residence more children than the maximum number of children permitted in the licence unless the admission is approved by a director for a specified period of time. **O. Reg. 550/85, s.59(3)**

## **11. CHANGE IN OFFICERS OR DIRECTORS OF A LICENSED CORPORATION**

A licensee that is a corporation shall notify a director in writing within 15 days of any change in the officers or directors of the corporation.

**O. Reg. 550/85, s.59(4)**

## **12. INSPECTION OF PREMISES BY LOCAL MEDICAL OFFICER OF HEALTH**

A local medical officer of health having jurisdiction in the area where a residence is located or any person designated by the local medical officer of health may, at all reasonable times, upon producing proper identification, enter the residence and may, with respect to the health, safety or nutrition of the residents, inspect the facilities, the services provided, the books of account and the records relating to the services and make copies of those books and records or remove them from the premises to copy them as may be reasonably required.

**O. Reg. 550/85, s.63(2)**

No person shall hinder, obstruct or attempt to hinder or obstruct a local medical officer of health or a person designated by the local medical officer of health in the performance of the duties or knowingly give false information about the premises or services to a local medical officer of health or a person designated by the local medical officer of health. **O. Reg. 550/85, s.63(2)**

No licensee or person in charge of a residence shall refuse to give a local medical officer of health or a person designated by the local medical officer of health access to the books and records referred to or refuse to give a local medical officer of health or a person designated by the local medical officer of health information about the premises or services that the local medical officer of health or a person designated by the local medical officer of health reasonably requires. **O. Reg. 550/85, s.63(3)**

The licensee shall carry out any recommendation made by the local medical officer of health or a person designated by the local medical officer of health concerning the health, safety or nutrition of any child in the residence. **O. Reg. 550/85, s.63(4)**

### **13. DEATH OF A RESIDENT**

Where a resident dies, the licensee who operates the residence shall notify a coroner, other than a coroner who is a physician providing services to the residence, of the death. **O. Reg. 550/85, s.64(1)**

Where a foster child dies while in receipt of foster care in a foster home, the licensee who directly or indirectly operates the foster home shall, after consulting with the placing agency where the placing agency is not the licensee, notify a coroner. **O. Reg. 550/85, s.64(2)**

### **14. MANAGEMENT PRACTICES**

#### **(1) Responsibility for Management**

Every licensee who provides residential care is responsible for the operation and management of the residences operated by the licensee, including the program, financial and personnel administration of the residences. **O. Reg. 550/85, s.65(1)**

A licensee may appoint a person who shall be responsible to the licensee for the day to day operation and management of the residences.

**O. Reg. 550/85, s.65(2)**

Where a licensee or the person responsible for operation and management is absent, the powers and duties of the licensee or the person appointed under subsection (2) shall be exercised and performed by such person as the licensee designates.

**O. Reg. 550/85, s.65(3)**

**(2) Written Statement of Policies and Procedures for the Residence**

Every licensee shall maintain an up to date written statement of policies and procedures with respect to each residence operated by the licensee that sets out,

- (a) the purpose of the residence;
- (b) the program provided in the residence;
- (c) procedures relating to the admission and discharge of residents;
- (d) the planning, monitoring and evaluation of care provided to residents;
- (e) procedures for the maintenance of case records;
- (f) methods of maintaining discipline;
- (g) the health program provided for residents;
- (h) the methods of maintaining security of the residence;
- (i) the methods for involving a resident's parent with the program of the residence;
- (j) the administrative structure of the residence;
- (k) staff and supervisory practices to be followed by staff persons in the residence;

- (l) the conduct and discipline of persons employed in the residence;
- (m) procedures to be followed in emergencies;
- (n) the financial administration of the residence;
- (o) the methods employed to encourage residents to participate in community activities;
- (p) articles prohibited by the licensee for the purposes of subsection 99(3) of the Act (articles sent through the mail);
- (q) procedures governing punishment and isolation methods that may be used in the residence.

**O. Reg. 550/85, s.66(1)**

A copy of these policies and procedures shall be kept in each residence and shall be accessible to each person employed in the residence.

**O. Reg. 550/85, s.66(2)**

These requirements do not apply where the policies and procedures concerning conduct and discipline are included in a collective agreement between the licensee and employees of the licensee.

**O. Reg. 550/85, s.66(3)**

### **(3) Daily Logs**

Every licensee shall ensure that a daily log is maintained in each residence operated by the licensee.

**O. Reg. 550/85, s.67(1)**

Each incident that affects or that in the opinion of the licensee may affect the health, safety or well-being of a staff person in the residence or a resident shall be included in the daily log.

**O. Reg. 550/85, s.67(2)**

### **(4) Health Assessment of Employees**

Every licensee shall ensure that each person employed in a residence operated by the licensee receives each immunization as is recommended by the local medical officer of health and a health assessment before the person commences employment.

**O. Reg. 550/85, s.68**

**(5) Orientation of Employees**

Every licensee shall ensure that each person employed to work in a residence operated by the licensee shall receive an orientation with respect to the policies and procedures of the residence within thirty days of commencement of employment in the residence.

**O. Reg. 550/85, s.69**

**(6) Annual Budgets**

Every licensee shall prepare and maintain an annual budget that with respect to each residence operated by the licensee sets out,

- (a) anticipated revenue of the residence; and
- (b) projected basic care expenditures and special care expenditures for the residents in the residence.

**O. Reg. 550/85, s.70(1)**

Where a licensee operates two or more residences, a separate budget shall be prepared for each residence and each budget shall show the individual costs for each residence and the costs that are shared between the residences.

**O. Reg. 550/85, s.70(2)**

**(7) Financial Reports**

Every licensee shall, in respect of each residence maintained and operated by the licensee,

- (a) keep a complete record of revenues and expenditures made in connection with the operation of each residence; and
- (b) prepare and submit financial reports to a director when required by a director including reports by a public accountant licensed under the Public Accountancy Act.

**O. Reg. 550/85, s.71(1)**

This requirement applies with necessary modifications to a licensee placing children for adoption.

**O. Reg. 550/85, s.71(2)**



**(8) Insurance Coverage**

Every licensee shall ensure that a policy of insurance with respect to each residence operated by the licensee is obtained and maintained in full force and effect. **O. Reg. 550/85, s.72(1)**

A policy of insurance with respect to a residence shall include,

- (a) fire and extended coverage including coverage for the theft of the physical assets of the residence and the property of the residents;
- (b) comprehensive general liability coverage and personal injury coverage, including coverage for the employees of the residence and volunteers in the residence and in the case of a parent-model residence, the persons who provide care for the residents;
- (c) a clause concerning liability arising out of any contract or agreement; and
- (d) motor vehicle coverage for all vehicles owned or used by employees of the residence and volunteers in the residence and in the case of a parent-model residence, all vehicles owned or used by persons who provide care for residents.

**O. Reg. 550/85, s.72(2)**

Note: Regulations governing admissions (O. Reg. 550/85, ss.73-94) are covered in Volume 1.)

**15. FILES TO BE MAINTAINED BY PRIVATE ADOPTION LICENSEES**

Every licensee referred to in Part VII of the Act shall open and maintain a separate file with respect to,

- (a) each person who is a parent within the meaning of subsection 131(1) of the Act who relinquishes a child to the licensee for adoption;
- (b) each prospective adoptive parent;

- (c) each child who is placed or who is intended to be placed for adoption by the licensee; and
- (d) each foster parent who provides services to the licensee in connection with an adoption. **O. Reg. 550/85, s.94(1)**

The licensee shall review each file referred to above and bring the file up to date at least every six months until the file is closed. **O. Reg. 550/85, s.94(2)**

The licensee shall permanently retain a record of the contents of each file referred to above unless the file is delivered up to the Minister as required under subsection 186(1) of the Act. (Where licence revoked or operation ceases.) **O. Reg. 550/85, s.94(3)**

#### **16. STATISTICAL INFORMATION TO BE REPORTED TO A DIRECTOR**

Every licensee shall submit to a director such statistical information as the director may require with respect to the operation of a residence operated by the licensee.

#### **17. STAFF KNOWLEDGE OF EMERGENCY PROCEDURES**

Every licensee shall ensure that each staff person employed in a residence operated by the licensee is instructed in all emergency procedures of the residence at the time of commencing work in the residence and at least annually thereafter. **O. Reg. 550/85, s.96**

#### **18. STAFFING OF THE RESIDENCE**

Every licensee shall employ a sufficient number of program staff persons in each residence operated by the licensee to ensure a minimum ratio of 1 program staff person to every 8 residents in the residence averaged over a 24-hour period. **O. Reg. 550/85, s.97(1)**

Every licensee who operates a parent model residence without auxiliary staff persons shall ensure that the total number of children in the residence does not exceed 8.

**O. Reg. 550/85, s.97(2)**

Every licensee who operates a staff model residence where more than 1 program staff person is on duty per shift shall ensure that one program staff person is designated to be in charge of the shift.

**O. Reg. 550/85, s.97(3)**

Every licensee shall ensure that where a child is on the premises of a residence, the licensee has made reasonable provision in the circumstances for the supervision, care and safety of the child and that an additional adult is on call when children are on the premises and only 1 adult is on the premises.

**O. Reg. 550/85, s.97(4)**

## **19. LICENSING DOCUMENTATION**

Every person who applies for a licence to establish and maintain a residence shall prepare and keep on file and provide to a director when required by the director,

- (a) a written proposal that outlines the program goals of the residence, the types of residents to be served in the residence and the services to be provided in the residence;
- (b) documentation of the needs for the residence and a description of the needs of the client population to be served by the residence;
- (c) documentation of the community and neighbourhood facilities and services that are available and the ways in which these are appropriate and available to the resident to be served by the residence;
- (d) written evidence of consultation with community facilities and services where services for the residents will be required;
- (e) information concerning facilities that are similar to the residence or that offer similar services to the residence within the neighbourhood and their proximity to the proposed site of the residence;

- (f) a description of the neighbourhood in which the applicant proposes to establish the residence and of the ways in which the neighbourhood will be suitable for the residence;
- (g) evidence that the municipalities and school boards in the area where the residence is to be located have been notified in writing of the intent to establish a residence;
- (h) a plan for securing neighbourhood acceptance of the residence; and
- (i) a plan for securing funds to establish, equip and operate the residence.

**O. Reg. 550/85, s.98(1)**

Every applicant for a licence or renewal of a licence to establish, operate or maintain a residence shall provide to a director a copy of the site plan of the residence and a drawing to scale that sets out the floor plan of the residence, showing windows, doors, exits and stairways and the proposed uses of each room in the residence.

**O. Reg. 550/85, s.98(2)**

## **20. ACCOMMODATION FOR RESIDENTS**

Every licensee shall ensure that each residence operated by the licensee meets the following requirements:

1. No room without a window is used as a bedroom.
2. No basement area or room is used for sleeping accommodation unless such use is approved by a director.
3. Each bedroom has a minimum area of 5 square metres of floor space for each resident over the age of 18 months and under the age of 16 years.
4. Each bedroom has a minimum of 7 square metres of floor space for each resident 16 years of age or over.
5. A residence that accommodates residents under the age of 18 months has a minimum area of 3.25 square metres of floor space for each resident

and at least 7.5 square metres of floor space in every bedroom where residents under the age of 18 months are accommodated.

6. Each resident is provided with his or her own bed and clean mattress suitable for the resident's age and size, together with bedding that is appropriate according to the weather and climate.
7. No resident over 6 years of age shares a bedroom with another resident of the opposite sex unless the sharing is approved by a director.
8. The residence has a minimum of 1 wash basin with hot and cold water and 1 flush toilet for every 5 residents or fewer and 1 bath or shower with hot and cold water for every 8 residents or fewer and, where there is more than 1 toilet in any one room, each toilet has a separate compartment.
9. The water temperature in a washroom or bathroom in a residence does not exceed 49 degrees Celsius.
10. The residence has an outdoor play space that is equivalent in area to at least 9 square metres for each resident based on the maximum number of children permitted in the licence except where an alternative arrangement is approved by the director.
11. The outdoor play space is maintained in a safe and sanitary condition.
12. The temperature of the residence is maintained at not less than 17 degrees Celsius.

**O. Reg. 550/85, s.99**

Every licensee shall ensure that in each residence operated by the licensee,

- (a) drugs and records are kept in locked containers and that only persons authorized by the licensee have access to the drugs and records;
- (b) each fuel-fired appliance in the residence is serviced by a person who is the holder of a certificate issued under section 14 of the Energy Act at least once a year; and



- (c) The chimneys in the residence are cleaned as often as is necessary to keep them in a safe operating condition and a record is kept of the servicing and cleaning.

**O. Reg. 550/85, s.100**

## **21. FIRE SAFETY AND HEALTH**

Every licensee shall ensure that each residence operated by the licensee has,

- (a) at least 1 acceptable exit from the 1st storey of the residence;
- (b) at least 1 acceptable exit or 2 means of egress from the 3rd storey of the residence where the 3rd storey provides sleeping accommodation;
- (c) one or more single station smoke alarms listed by Underwriter's Laboratories of Canada located in each bedroom or sleeping area and in each storey at interior stairways;
- (d) a fire-resistant partition between any fuel-fired central heating appliance and the remainder of the building where there is a bedroom on the same floor as the central heating fuel-fired appliance; and
- (e) a 2A 10B.C.-rated fire extinguisher for the kitchen that is listed by Underwriter's Laboratories of Canada.

**O. Reg. 550/85, s.101**

Every licensee shall ensure that in each residence operated by the licensee,

- (a) all staff persons and residents are instructed in a manner suitable for their understanding in the procedures to be followed when a fire alarm is activated;
- (b) the procedures referred to in clause (a) are,
  - (i) posted in conspicuous places in the residence, and
  - (ii) practised at least once a month and a record is kept of each practice;
- (c) the fire alarm is used to initiate fire drills;

- (d) flammable liquids and paint supplies that are kept in the residence are stored in lockable containers;
- (e) sprinkler heads and fire detector heads in the residence are not painted;
- (f) all staff persons are trained in the proper use of fire extinguishing equipment and a record is kept of each training session using such equipment;
- (g) an inspection of the premises of the residence, including equipment in the kitchen and laundry is made each night to ensure that there is no danger of fire and that all doors to stair-wells, fire doors and smoke barrier doors are closed; and
- (h) a record of each inspection referred to in clause (g) is kept in the daily log of the residence.

**O. Reg. 550/85, s.102(1)**

Every licensee shall ensure that in each residence operated by the licensee,

- (a) all poisonous and hazardous substances are kept in lockable containers;
- (b) harmful substances and objects not essential to the operation of the residence are not allowed in the residence;
- (c) fire-arms are not allowed in the residence; and
- (d) a supply of drinking water is provided that is in the opinion of the local medical officer of health sanitary and adequate for the requirements of residents.

**O. Reg. 550/85, s.102(2)**

## **22. SELECTION, DEVELOPMENT AND MANAGEMENT OF FOSTER HOMES**

Note: Regulations governing care in foster homes (O. Reg. 550/85, ss.104-108) are covered in Volume 1.)

Every licensee shall develop procedures for the selection, development and management of the foster homes used by the licensee.

**O. Reg. 550/85, s.109(1)**

Every licensee shall develop and maintain,

- (a) a system for classifying and utilizing foster homes;
- (b) procedures for the recruitment, screening and selection of foster parents;
- (c) an up-to-date list of foster homes that are approved by the licensee;
- (d) a system for supervising foster homes; and
- (e) a system for evaluating foster homes annually according to the objectives set for the type and level of care to be provided in each home.

**O. Reg. 550/85, s.109(2)**

Every licensee shall ensure that it places no more than 4 foster children and no more than 2 foster children under 2 years of age in each foster home.

**O. Reg. 550/85, s.110(1)**

This provision does not apply where all foster children are of common parentage or related to the foster parents and the placement is approved in writing by a director.

**O. Reg. 550/85, s.110(2)**

Where a director approves a placement referred to in subsection (2), the licensee shall ensure that the director's written approval is available for inspection by a program supervisor.

**O. Reg. 550/85, s.110(3)**

No licensee shall approve a foster home to receive a child for foster care until the licensee or a person designated by the licensee,

- (a) conducts at least 1 planned interview with a foster parent applicant in the applicant's home;
- (b) conducts an interview with each adult who resides in the home individually and in a group where more than 1 adult resides in the home;
- (c) in addition to the adults referred to in clause (b), meets with other family members of the applicant that live with the applicant and all other persons living in the home;

- (d) receives from the applicants the names of at least 3 persons in the community as references for the applicant;
- (e) contacts the references referred to in clause (d) by letter or telephone and makes a record of their comments regarding the suitability of the applicants to provide foster care;
- (f) obtains a written statement from a physician or an individual approved by the local medical officer of health regarding the general health and specific illnesses or disabilities of the foster parent applicants and family members and whether or not they might interfere with the provision of foster care; and
- (g) visits the applicant's home to determine whether or not it is suitable for placement of a foster child.

**O. Reg. 550/85, s.111(1)**

A person who visits an applicant's home to determine whether or not it is suitable as a foster home shall inspect the common living areas of the applicant's home, the proposed sleeping area for a foster child, the grounds surrounding the home and the play space used by children in the home and the recreational areas within walking distance of the home.

**O. Reg. 550/85, s.111(2)**

This visit shall be recorded in the applicant's file. **O. Reg. 550/85, s.111(3)**

No licensee shall approve a home as a foster home unless the licensee is satisfied that the regular sleeping accommodation for the foster child or children meets the following requirements:

1. No room without a window is used as a bedroom.
2. No bedroom is in a building detached from the foster home, an unfinished attic or unfinished basement or a stairway hall.
3. Each foster child has a bed and clean mattress suitable for the age of the foster child together with bedding that is appropriate according to the weather and climate.

4. No foster child shares a bed or sleeping room with an adult couple or adult of the opposite sex, unless a child is ill or an infant and the needs of the child require that the child be in the same room as an adult.
5. No foster child over 6 years of age shares a bedroom with another child of the opposite sex.

**O. Reg. 550/85, s.112(1)**

Paragraph 4 above does not apply where a child is ill or is an infant and the needs of the child require that the child be in the same room as an adult.

**O. Reg. 550/85, s.112(2)**

These requirements do not apply where a director approves an alternative arrangement.

**O. Reg. 550/85, s.112(3)**

### **23. FOSTER CARE SERVICE AGREEMENT**

Every licensee that intends to place a child in foster care shall enter into a written foster care service agreement with the foster parents before placing the foster child with the foster parents.

**O. Reg. 550/85, s.113(1)**

The foster care service agreement shall set out,

- (a) the respective roles of the licensee and the foster parents;
- (b) the responsibilities and obligations of the foster parents and licensee for meeting the foster child's needs including,
  - (i) court appearances,
  - (ii) record keeping,
  - (iii) attendance at case conferences and reviews,
  - (iv) attendance at and accompaniment of the foster children to a clinic, hospital or a school or a consultation with professional persons;
- (c) support and training services to be provided by licensee to the foster parents during the placement of children, including,



- (i) frequency and form of supervision,
  - (ii) relief services,
  - (iii) training opportunities, and
  - (iv) professional consultation for the foster child;
- (d) financial arrangements for the care of the child, including,
- (i) the basis for determining the amount of payment to the foster parents,
  - (ii) the method and frequency of payment to the foster parents, and
  - (iii) the basis for determining which expenditures that the foster parents incur that the licensee will reimburse;
- (e) those things that are considered to be confidential between the foster parents and the licensee;
- (f) the frequency of performance evaluation by the licensee; and
- (g) the basis for termination of the agreement. **O. Reg. 550/85, s.113(2)**

The foster care service agreement shall be reviewed by the licensee at the time of placement of the child and updated by the parties to the agreement from time to time as is necessary to give proper effect to the agreement.

**O. Reg. 550/85, s.113(3)**

## **24. SUPERVISION AND SUPPORT OF THE FOSTER FAMILY**

Every licensee shall assign a staff person to supervise and support every foster family approved for placement by the licensee and to arrange for the support services provided for in the foster care service agreement.

**O. Reg. 550/85, s.114(1)**

This staff person shall,

- (a) respond to each foster parent inquiry within 24 hours of the inquiry;

- (b) visit the foster family home where the child is placed and consult with at least 1 foster parent within 7 days of the placement, within 30 days of the placement and every 3 months thereafter; and
- (d) where the foster family is approved by the licensee and no child has been placed with the family, consult with the family every 3 months.

**O. Reg. 550/85, s.114(2)**

**REVIEW BY THE**  
**CHILDREN'S SERVICES REVIEW BOARD**

**C.F.S.A. s.190**

**1. PURPOSE OF THE BOARD**

**C.F.S.A. ss.190; 205(1c)(1)**

The Children's Services Review Board (C.S.R.B.) is a body continued under the Child and Family Services Act from predecessor legislation to provide a forum for review of certain administrative decisions made under the new legislation.

**2. POWERS AND DUTIES OF THE BOARD**

The Children's Services Review Board now draws its powers and duties from the Child and Family Services Act and regulations made under the Act. The review power extends to the following decisions:

- a. a Ministry director's decision relating to the licensing of children's residences under Part IX of the Act (substantially the same power as set out in predecessor legislation); **C.F.S.A. s.180**
- b. a decision of a residential placement advisory committee as requested by a child over age 12; (NEW POWER) **C.F.S.A. s.36**
- c. a Ministry director's refusal to approve a proposed adoption placement (substantially the same power as set out in predecessor legislation i.e., the Child Welfare Act); **C.F.S.A. s.36**
- d. a service provider's decision to disallow access to information in his record; or to make a correction to information allegedly incorrect in the record; (NEW POWER) **C.F.S.A. ss.167, 171**
- e. an allegation that a service provider has disclosed information in a record without authority. (NEW POWER) **C.F.S.A. ss.167, 171**

**3. COMPOSITION OF THE BOARD****C.F.S.A. s.190  
O. Reg. 550/85**

The Board shall consist of 11 members.

**O. Reg. 550/85, s.60(1)**

A member of the Board may be appointed for a term of 6 months, 1 year, 2 years or 3 years.

**O. Reg. 550/85, s.60(2)**

Three members of the Board constitute a quorum.

**O. Reg. 550/85, s.60(3)**

A vice-chairman designated by the chairman has the jurisdiction and shall exercise the power of the chairman,

(a) in the absence of the chairman; or

(b) if the chairman is unable to act or the office of the chairman is vacant.

**O. Reg. 550/85, s.60(4)**

The chairman shall, from time to time, assign various members of the Board to its various hearings.

**O. Reg. 550/85, s.60(5)****4. HEARINGS BEFORE THE BOARD**

A notice under subsection 180(1) of the Act (notice of proposal) in respect of an application for a licence or a renewal of a licence referred to in subsection 176(1) of the Act (licence required) shall be in Form 26 and shall be accompanied by 2 blank copies of Form 28.

**O. Reg. 550/85, s.61(1)**

A notice under subsection 136(2) of the Act (director's approval) or under subsection 180(1) of the Act (notice of proposal) in respect of an application for a licence or a renewal of a licence referred to in subsection 176(2) of the Act (licence required) shall be in Form 27 and shall be accompanied by 2 blank copies of Form 28.

**O. Reg. 550/85, s.61(2)**

A request for a hearing shall be in Form 28.

**O. Reg. 550/85, s.61(3)**

An application to the Board under subsection 36(1) of the Act (review by Board) shall be in Form 29. **O. Reg. 550/85, s.61(4)**

The Board shall serve notice of a hearing in Form 30 on the parties to the hearing within 15 days of receiving the notice of the request for the hearing. **O. Reg. 550/85, s.62(1)**

The Board shall serve the notice under subsection (1) to each party to the hearing by sending the notice by registered mail to the party at the party's address last known to the Board. **O. Reg. 550/85, s.62(2)**

## **5. REVIEW OF DIRECTOR'S DECISION RELATED TO THE LICENSING OF A CHILDREN'S RESIDENCE**

### **(1) Parties to the Hearing** **C.F.S.A. s.184(1)**

The following persons are parties to the hearing:

- a. the Ministry director;
- b. the applicant or licensee who requested the hearing;
- c. any other person that the Board specifies.

### **(2) Criteria for Informed and Impartial Decision-Making** **C.F.S.A. s.184**

The Child and Family Services Act provides the following special protections to the parties to guard the integrity of the hearing:

- a. any party to the proceeding must be given an opportunity, before the hearing, to examine any written or documentary evidence that will be produced to the Board as well as any report, the contents of which will be given in evidence at the hearing. **C.F.S.A. s.184(5)**
- b. no member of the C.S.R.B. who has taken part in any investigation or consideration of the subject matter that forms the basis of the review is permitted to take part in the hearing; **C.F.S.A. s.184(2)**



- c. unless all parties are notified and given an opportunity to participate, those members of the Board who do take part in the hearing are not permitted to communicate with any person about the subject matter of the hearing, except as follows:

- (i) communication with another member of the C.S.R.B.;
- (ii) communication with a lawyer, provided the lawyer does not represent any of the parties to the hearing;
- (iii) communication with an employee of the C.S.R.B.;

**C.F.S.A. s.184(3)**

- d. the Board may seek independent legal advice about the subject matter of the hearing, but if it does so, it must disclose to the parties the nature of that advice, so that the parties may respond, if they wish;

**C.F.S.A. s.184(4)**

- e. the evidence taken at the hearing must be recorded in order to allow the parties to requisition a transcript of it if they wish;

**C.F.S.A. s.184(6)**

- f. the only members of the C.S.R.B. who are permitted to participate in the Board's decision are those who have been present throughout the hearing and heard the evidence and arguments of the parties;

**C.F.S.A. s.184(7)**

- g. unless the parties consent, the C.S.R.B. cannot make its decision unless all members of the Board who were present throughout participate in the decision, i.e., no one Board member can opt out;

**C.F.S.A. s.184(7)**

- h. the Board is to make a final decision and notify the parties of it within 90 days of the applicant's request for a hearing, notwithstanding Section 21 of the Statutory Powers Procedure Act.

**C.F.S.A. s.184(8)**

**(3) Options Available to the Board**

**C.F.S.A. ss.181(2); 180**

After it has heard and weighed the evidence presented to it at the hearing, the Board may take any of the following actions:

In the case of a review of terms and conditions imposed on a licence by the Ministry director:

- a. confirm any or all of the conditions prescribed by the director;
- b. strike out any of the terms and conditions prescribed by the director;
- c. impose such other terms and conditions to the licence that the Board considers appropriate.

In all other cases (i.e. Ministry director's refusal to issue a licence, refusal to renew suspension or proposal to revoke):

- a. order the Ministry director to carry out his intended proposal (except in the case of suspension where the review takes place after the director has intervened); or
- b. order the director to take such other action as the Board considers appropriate, and as permitted by the licensing provisions of the Act and the regulations.

The Child and Family Services Act specifically gives the Children's Services Review Board discretion to substitute its opinion for that of the Ministry director.

## **6. APPEAL OF THE C.S.R.B. DECISION TO THE DIVISIONAL COURT**

**C.F.S.A. s.185(1)(2)(3)**

Any decision of the C.S.R.B. related to licensing under Part IX of the Child and Family Services Act may be appealed to the Divisional Court. The procedure for this appeal is contained in the rules of practice governing civil matters brought before the Supreme Court of Ontario.

The aggrieved applicant or licensee who wishes to initiate this appeal must serve notice of the appeal on the C.S.R.B. The Board must then file with the Registrar of the Supreme Court of Ontario the record taken at the Board's hearing.

The Minister is entitled to be heard on the argument of an appeal before the Divisional Court.

Failure to comply with an order or direction made by the court is an offence. An individual or corporate director, officer or employee who authorizes, allows or concurs in the corporation's contravention of the court order is liable on conviction to a fine of up to \$2,000.

**7. REVIEW OF DIRECTOR'S DECISION RELATED TO THE LICENSING OF PRIVATE ADOPTION C.F.S.A. s.184**

Parties to this review, the criteria for informed and impartial decision-making by the Board, and the options available to the Board as a result of its review parallel those set out for C.S.R.B. review of a decision related to the licensing of a children's residence.

**8. REVIEW OF A DECISION OF THE RESIDENTIAL PLACEMENT ADVISORY COMMITTEE C.F.S.A. s.36**

This review may be requested by a child if each of the following statutory criteria are met:

- a. he is 12 years of age or older;
- b. he is residing in a residential placement, defined as any care provided for the child away from the home of his parent;
- c. he objects to the placement;
- d. he has had the benefit of placement review by a residential placement advisory committee;
- e. he is dissatisfied with the committee's recommendation or alternatively the committee's recommendation is not followed.

The role of the Board, if the child makes application to it for review, is to determine where the child should remain or be placed.

The Board is required to conduct a review if the child makes application to it. Whether the review is undertaken by formal hearing is a decision left to the Board's discretion under the Child and Family Services Act. The Act requires the Board to advise the child within 10 days of receiving the application whether the Board intends to hold a hearing.

Parties to a hearing in this review are:

- a. the child;
- b. the child's parent(s) or alternatively, where the child is in the lawful custody of a children's aid society, the society;
- c. where the child is an Indian or native person, a representative chosen by the child's band or native community; and,
- d. any other persons that the Board specifies.

The Board must make its determination within 30 days of receiving the child's application, unless the Board holds a hearing and the parties consent to a longer period.

The Child and Family Services Act gives the Board any of the following options on completion of its review:

- a. to order that the child be transferred to another residential placement, if the Board is satisfied that the other residential placement is available;
- b. to order that the child be discharged from the residential placement; or,
- c. to confirm the existing placement.

**9. REVIEW OF A SERVICE PROVIDER'S DECISION**  
**RELATING TO RECORDS UNDER PART VIII**

**C.F.S.A. s.171**

This review is initiated by a request from the person to whom access was denied that is made within 20 days of receiving notice of a service provider's decision to refuse access, in whole or in part, to a record or to correct a record.

This review is to be conducted in accordance with the provisions set out in regulations under the Child and Family Services Act.

Whether the Board holds a formal hearing is left to its discretion.

In conducting its review, the Board may examine the record in question.

As a result of its review the Board has any of the following options available to it:

- a. order the service provider to give the person access to all or part of the record;
- b. order the service provider to make a correction to the record and give notice to every person to whom the service provider has disclosed the record; or,
- c. if it is satisfied that the service provider's refusal is justified, confirm the refusal.

The Board is required to provide a copy of its decision to:

- a. the person who requested the review;
- b. the service provider; and,
- c. the Minister.



**10. REVIEW OF ALLEGATION THAT A SERVICE PROVIDER HAS  
DISCLOSED INFORMATION WITHOUT AUTHORITY C.F.S.A. s.171(2)**

A person who believed that a service provider may have disclosed his record without authority may, within 20 days of becoming aware of the possible unauthorized disclosure, request that the Children's Services Review Board review the matter.

The Child and Family Services Act requires the Board to conduct a review in such circumstances. Whether the review is undertaken by formal hearing left to the Board's discretion.

In conducting its review the Board may examine the record in question.

On completion of its review the Board:

- a. unless it is satisfied that no disclosure or no unauthorized disclosure of the person's record took place, must declare that the disclosure was unauthorized;
- b. may order the service provider to change his procedures for the maintenance and disclosure of persons' records, or to desist from a particular disclosure practice;
- c. where it is satisfied that an unauthorized disclosure took place, may also recommend to the Minister that the service provider's approval, if any, be revoked. Where the service provider is a licensee, the Board may recommend that the licence be revoked.

The Child and Family Services Act requires the Board to provide a copy of its decision to:

- a. the person who requested the review;
- b. the service provider;
- c. the Minister.

## RECORDS UNDER PART VIII

### **1. GENERALLY**

It should be noted that Part VIII of the Act has not yet been proclaimed.

The reader is referred to Appendix 2 of this volume and Volume 1, Front-Line Service Delivery, for other information on Part VIII.

### **2. RECORD KEEPING PROCEDURES**

The Child and Family Services Act requires the service provider to establish and follow a written code of procedures for the creation, maintenance and disclosure of records in his possession and under his control.

The code of procedure is required to contain the following:

- a. a description of the types of information that may be recorded and the purposes for which the information may be recorded;
- b. a requirement that information be collected from or confirmed by the person to whom it relates, wherever possible;
- c. a requirement that no more information be recorded than is actually necessary for the provision of the service in question;
- d. provisions prescribed by the regulations.

**C.F.S.A. s.174**

### **3. STORAGE OF RECORDS**

**C.F.S.A. s.174(3)**

Retention, storage and destruction of records must be undertaken in accordance with schedules set out in regulation under the Act. At the time of writing, schedules are being developed but are not yet in place.



## APPENDICES

### APPENDIX

### TITLE

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- |   |   |
|---|---|
| 1 | SUMMARY OF PROVISIONS OF THE STATUTORY POWERS<br>PROCEDURE ACT THAT AFFECT MATTERS UNDER THE<br>CHILD AND FAMILY SERVICES ACT, 1984                             |
| 2 | CONFIDENTIALITY AND ACCESS TO RECORDS (PART VIII)   |
| 3 | DIRECTOR'S DUTIES/RESPONSIBILITIES  |
| 4 | GENERAL PROVISIONS GOVERNING THE OPERATION OF<br>CORPORATIONS APPROVED AS "APPROVED AGENCIES"<br>FOR THE PURPOSES OF THE CHILD AND FAMILY<br>SERVICES ACT, 1984 |





## APPENDIX 1

### SUMMARY OF PROVISIONS OF THE STATUTORY POWERS PROCEDURE ACT THAT AFFECT MATTERS UNDER THE CHILD AND FAMILY SERVICES ACT, 1984

#### A. Types of Decision-making Encompassed by the Statutory Powers Procedure Act

The Statutory Powers Procedure Act is, as you might expect from its title, a statute that sets out basic rules of procedure for the following types of decision-making under a provincial statute:

1. powers of decision that prescribe the legal rights, powers, privileges, immunities, duties or liabilities of a person or party;

or

2. powers of decision that prescribe the eligibility of any person or party to receive a benefit under a provincial statute.

The Act applies only to proceedings where the decision-maker under the provincial statute is required to hold or to give the parties to the proceedings an opportunity for a hearing before he makes his decision.

**S.P.P.A. ss. 1(1)(d); 2; 3**

The rules do not apply to proceedings before a court.

**S.P.P.A. s.3(2)**

#### B. C.F.S.A. Proceedings Where the S.P.P.A. Rules do not Apply

In the following instances the Child and Family Services Act does not require a "hearing" to dispose of the matter:

1. Children's Services Review Board review of a decision of a Residential Placement Advisory Committee, initiated by a child 12 years of age or older.
2. Children's Service Review Board review of a service provider's refusal to permit access to a record in his possession, or the service provider's refusal to correct information in the record or an alleged unauthorized disclosure of a record.

Thus, the Statutory Powers Procedure Act does not apply.

## **Appendix 1 (Cont'd)**

### **C. C.F.S.A. Proceedings Where the S.P.P.A. Rules do Apply**

A hearing or an opportunity for the applicant to have the matter determined by a hearing, is required in the following instances under the Child and Family Services Act, – thus attracting the operation of the S.P.P.A. rules:

1. hearing by an appointee of the Minister and in the case of a children's aid society, an appointee of the Lieutenant-Governor into the Minister's proposal to revoke an agency's approval or a proposed takeover;  
**C.F.S.A. s.22**
2. hearing before the Children's Services Review Board to:
  - a) review a Director's proposal to impose a term or condition on the approval of a proposed adoption placement; **C.F.S.A. s.136(6)**
  - b) review of a Director's proposal to refuse issuance of a licence, to revoke a licence or to suspend a licence to operate a children's residence or to place a child for adoption; **C.F.S.A. ss. 180, 183**
  - c) review of a Director's imposition of terms and conditions to a licence; **C.F.S.A. s.181**
3. hearing before an appointee of the Director of the Child Abuse Register to remove a person's name from the register or otherwise amend the register.  
**C.F.S.A. s.72**

### **D. The Rules of Procedure Under the Statutory Powers Procedure Act**

These rules are set out in Part I of the Statutory Powers Procedure Act and are briefly as follows, as they affect proceedings under the Child and Family Services Act:

1. "Parties" to the hearing are those persons specified as parties under the Child and Family Services Act. Where the Act does not so specify, the parties to the proceeding are those persons entitled by law to be parties of the proceedings; in other words, those persons whose legal interests are likely to be directly affected by the outcome of the proceeding.  
**S.P.P.A. s.5**
2. The parties to the proceeding may waive a hearing or the subsection of the proceeding to the requirements of the Statutory Powers Procedure Act, except where:
  - a) the Child and Family Services Act provides otherwise or
  - b) the decision-maker otherwise directs.

## Appendix 1 (Cont'd)

In the event of such waiver, the proceeding may be disposed of by agreement, consent order, or a decision given without a hearing or without compliance with the Statutory Powers Procedure Act.

3. Parties must be given reasonable notice of the hearing. That notice must include each of the following specifics:
  - a) a statement of the time, place and purpose of the hearing;
  - b) a reference to the statutory authority under which the hearing will be held;
  - c) a statement that if the party notified does not attend the hearing the decision-maker may proceed in his absence, and the party so notified will not be entitled to any further notice in the proceeding.
4. If due notice is given to a party and he does not attend the hearing, the decision-maker may proceed with the hearing in that party's absence. The non-attending party is not entitled to any further notice in the proceeding. **S.P.P.A. s.6**
5. If the good character, propriety of conduct or competence of a party is an issue in the proceeding, the party is entitled to be furnished with reasonable information of any such allegations. This information must be furnished prior to the hearing. **S.P.P.A. s.8**
6. The hearing is open to the public unless the decision-maker is of the opinion that:
  - a) matters involving public security may be disclosedor
  - b) intimate financial or personal matters or other matters may be disclosed and the desirability of avoiding their disclosure in the interests of any person affected or the public interest outweighs the desirability of a public hearing. **S.P.P.A. s.9(1)**
7. A party at the hearing may:
  - a) be represented by counsel or an agent;
  - b) call and question witnesses and present his arguments and submissions;
  - c) cross-examine witnesses to the extent that is reasonably required for a full and fair disclosure of the facts in relation to which they have given evidence. **S.P.P.A. s.10**
8. The decision-maker may give such orders or directions at the hearing as he considers necessary to maintain order and/or to prevent abuse of the hearing process. Police assistance may be sought to ensure that any such order or direction is obeyed. **S.P.P.A. ss.9(2); 23**

## Appendix 1 (Cont'd)

9. The decision-maker may exclude an agent other than an Ontario lawyer appearing on behalf of a party or as an advisor to a witness if it finds that such person is not competent properly to undertake such task or where the agent does not understand and comply at the hearing with the duties and responsibilities of an advisor. **S.P.P.A. s.23(3)**
10. The hearing may be adjourned from time to time either on the initiative of the decision-maker or where the decision-maker is satisfied that the adjournment is required to permit an adequate hearing to be held. **S.P.P.A. s.21**
11. The decision-maker may issue a summons to any person including a party, requiring him to give sworn evidence at the hearing and to produce specified documents and things relevant to the subject-matter of the proceeding and admissible at a hearing. Such summons must be served personally.
12. A bench warrant may be obtained from a judge of the Supreme Court of Ontario if the witness is properly summoned and fails to attend. **S.P.P.A. s.12(3)**
13. Contempt proceedings before the Divisonal Court are available against a witness who fails to attend the hearing, fails to testify as required, or does any other thing that would constitute contempt of court. **S.P.P.A. s.13**
14. A witness at a hearing is entitled to be advised of his rights by his counsel or agent, but the counsel or agent may take no further part in the hearing unless the decision-maker permits. **S.P.P.A. s.11(1)**
15. If the public is excluded from the hearing, counsel or agent for a witness is not entitled to be present except when that witness is giving evidence. **S.P.P.A. s.11(2)**
16. The decision-maker may require evidence to be given under oath and/or affirmation and has power to administer oaths and affirmations for this purpose. **S.P.P.A. s.22**
17. The decision-maker must inform a witness of his right to object to answer a question that may tend to incriminate him or may tend to establish his liability in a civil proceeding, according to the protection set out in s. 5 of the Criminal Code. **S.P.P.A. s.14(2)**
18. No answer of a witness that may tend either to incriminate him or establish his civil liability can be used against him in any subsequent trial or other proceeding, other than a prosecution for perjury. **S.P.P.A. s.14(1)**
19. Except where otherwise required by the Child and Family Services Act, the decision-maker may receive in evidence any oral testimony and/or document or other thing that is relevant to the subject matter of the proceeding except as follows:



**Appendix 1 (Cont'd)**

- a) the decision-maker may exclude anything unduly repetitious;
  - b) the decision-maker must exclude any evidence protected by privilege under the law of evidence;
  - c) the decision-maker must exclude any evidence that is prohibited by the Child and Family Services Act or any other statute.  
**S.P.P.A. s.15**
20. The decision-maker may reasonably limit cross-examination of a witness where it is satisfied that cross-examination has already been sufficient to disclose fully and fairly the facts in relation to which the witness has given evidence.  
**S.P.P.A. s.23**
21. The decision-maker may also take notice of facts that may be judicially noticed and take notice of any generally recognized scientific or technical facts, information or opinions within the scientific or specialized knowledge of the decision-maker.  
**S.P.P.A. s.16**
22. The final decision in the hearing must be in writing. If a party requests, the decision-maker must give written reasons.  
**S.P.P.A. s.17**
23. The final decision, with its reasons, is to be sent by ordinary mail to the parties who participate in the hearing.  
**S.P.P.A. s.18**
24. A certified copy of the decision may be filed with the Registrar of the Supreme Court of Ontario and enforced according to the rules governing enforcement applicable to the court.  
**S.P.P.A. s.19**
25. The tribunal must compile a record of any proceeding in which a hearing has been held. The record must include certain specified material as follows:
- a) any application, complaint, reference or other document by which the proceedings were commenced;
  - b) the notice of any hearing;
  - c) any intermediate orders of the decision-maker;
  - d) all documentary evidence filed with the decision-maker, subject to any limitation expressly imposed by any other Act on the use of such evidence;
  - e) the transcript, if any, of the oral evidence given at the hearing; and
  - f) the decision in the matter and the decision-maker's reasons where such reasons have been given.  
**S.P.P.A. s.20**
26. If the matter is appealed, the decision does not take effect unless the contrary is provided in the Child and Family Services Act or except where the appellate body otherwise orders.  
**S.P.P.A. s.25**





## **APPENDIX 2**

### **CONFIDENTIALITY AND ACCESS TO RECORDS (PART VIII)**

#### **INTRODUCTION**

Part VIII of the Act was not proclaimed on November 1, 1985, but will come into effect on a date to be announced. Because of the number of questions about the records provisions work is underway to provide further information, explanation, interpretation, etc., as a guide to service providers in planning their records procedures.

In the meantime, the following statement of the meaning of access has been prepared.

#### **MEANING OF ACCESS IN PART VIII**

During the training and planning for implementation concerning the Child and Family Services Act, one of the issues that has arisen is the fact that service providers are unclear as to what is meant when a person is said to be able to obtain access to his or her record.

The concept of access is a flexible one in that it may occur in a number of ways. Regardless of the manner in which access occurs, it must adhere to the philosophy that what is envisioned is full and meaningful access to those records to which the individual is entitled in accordance with Part VIII of the Act. It should be noted that the Act provides for some exceptions and restrictions as in Section 167.

While the right of access is to all the information to which the Act applies, a specific request may, however, not necessarily require access to all records of the individual. Rather, it may, for example, be a request for a particular document, or for records during a particular time period. It may be advisable for the service provider to clarify at the time of the request, whether access to all records is desired, or whether the request is more specific.

Access could involve:

- o a worker assisting the person in interpreting the records in question;
- o permitting a person to sit in an office to read and/or copy out the records to which he or she is entitled;
- o a photocopy of desired material from the individual's records.

Access is only meaningful if it is in a form that is comprehensible to the person concerned. It is unlikely that access would ever be simply a worker telling the person seeking access what was in the file, unless, of course, this was the specific request made by the person.

## **Appendix 2 (Cont'd)**

While the actual manner in which access is given will be flexible, and will most frequently depend on the type of access being sought by the person, the service provider must always bear in mind that the underlying intention is to provide the person with full and meaningful access to those records to which he or she is entitled.

Service providers should also remember that when a person requests access to a record, an immediate response is not required. Section 169 of the Child and Family Services Act states that, within 30 days of receiving the request for access, the service provider must either grant access, refuse access to all or part of the record, or inform the person that the record does not exist or that Part VIII of the Legislation does not apply to it.

Similarly, if a person asks the service provider to correct a record, Section 170 provides that within 30 days, the service provider is to correct the record, refuse to correct the record, or inform the person that the record does not exist or that Part VIII of the Legislation, does not apply. Therefore, decisions regarding corrections that have been requested do not have to be made immediately.

In addition, service providers should keep in mind the fact that Part VIII is not retroactive and will not apply to records made prior to proclamation of this Part. This time line gives service providers the opportunity to organize their systems.

In the meantime, additional material is being developed to assist in the implementation of this Part. It should also be noted that the Case Information Disclosure Policy Manual has now been distributed.

# APPENDIX 3

## APPENDIX 3 DIRECTOR'S

### DUTIES/RESPONSIBILITIES

CHILD AND FAMILY SERVICES ACT      Approved by OMC -      PART I: Flexible Services

DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Review objections from approved agency re terms and conditions of approval	S.10(2)		X		Area Manager	
<u>C.A.S.'s</u> Advise and supervise Societies	S.17(1)a	X		Area Manager Program Supervisor	No change	
Inspect or direct and supervise inspection of operation and records of Societies	S.17(1)b	X		Area Manager Program Supervisor	No change	
Exercise powers and duties of Society where no Society is functioning	S.17(1)c	X		Area Manager	No change	
Direct/supervise inspection of places in which children in care are placed	S.17(1)d	X X		Area Manager Program Supervisor	No change	
Ensure standards of service and procedures and practices required by SS.15(4)	S.17(1)e	X		Area Manager	No change	
Designate place or class of places as places of safety	S.17(2)	X		Area Manager	Local Director	Approved by OMC October 30, 1985 Delegation completed

Appendix 3 (Cont'd)

<p style="text-align: center;">DIRECTOR'S DUTIES/RESPONSIBILITIES</p>						
CHILD AND FAMILY SERVICES ACT			Approved by OMC - PART II: Voluntary Agreements			
DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Approve extension of a Temporary Care Agreement beyond 6 months but not exceeding an aggregate of 12 months	S.29(5)	XX		Area Manager	Local Director	Approved - Delegation completed
Approve for Society to provide services to a child with special needs	S.30(1)	XX		Area Manager	No change	
Extend Special Needs Agreement period in case of agreement with Society	S.30(3)	XX		Area Manager	No change	
Approval of Society Agreements with 16 and 17 year olds	S.31(1)	XX		Area Manager	No change	
Designate institutions for purposes of this section	S.34(5)		XX	Area Manager	No change	



Appendix 3 (Cont'd)

**DIRECTORS**

**DUTIES/RESPONSIBILITIES**

**CHILD AND FAMILY SERVICES ACT**

**Approved by OMC -**

**PART III: Child Protection**

DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Director's discretion re foster placement	S.37(5)	X		Local Director		Authority previously held by court
Director as a party to child protection proceedings	S.39(2)	XX		Area Manager	No change	
Director, power of child protection worker	S.37(1)(b)	XX		Area Manager	No change	
Director receives copies of assessment reports	S.51(3)e	XX		Area Manager	No change	
May approve removal of a child from a foster foster home or residential placement	S.57(6)	XX		Area Manager	No change	Act also gives authority to Local Director
No removal until review on request of foster parents completed or Director recommends move	S.57(8)	XX		Area Manager	No change	Act also gives authority to Board of Directors of Society
May remove due to substantial risk to child's health or safety	S.57(9)	XX		Area Manager	No change	Act also gives authority to Local Director
Director to receive notice regarding status reviews of Crown Wards	S.60(6)f	XX		Area Manager	No change	
Director to conduct annual review of Crown Wards	S.62(1)	XX		Director <sup>(1)</sup> Queen's Park	No change	Director <sup>(1)</sup> - Queen's Park Graham Lethbridge Sandra Scarth
Upon completion of review [62(1)] may direct Societies to make application for review of child's status under SS.60(2)	S.62(2)(1)	XX		Director <sup>(1)</sup> Queen's Park	No change	
Give any other direction which in Director's opinion is in the child's best interest	S.62(1)(2)	XX		N/A	All Directors	Procedures will require classification

### Appendix 3 (Cont'd)

#### DIRECTOR'S

#### DUTIES/RESPONSIBILITIES

#### CHILD AND FAMILY SERVICES ACT

#### Approved by OMC -

#### PART III: Child Protection

DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Approve Societies' written complaints procedure	S.64(1)	XX		Area Manager	No change	
Review of public complaint about Society	S.64(3)		XX	N/A	Area Manager	
May make appeal from Child's Protection Court's Order under this part	S.65(1)(d)		X	N/A	Area Manager	Act also gives Local Director authority
May approve continuation of care and maintenance upon expiry of Crown Wardship	S.67(2)			Area Manager	Local Director	Approved OMC - June 9/85 Local Director limited to set amount that can be approved - Delegation completed
May seek Court ordered access to records	S.70(2)	XX	X	Area Manager	No change	
<u>CHILD ABUSE REGISTER</u>						
Maintain Child Abuse Register	S.71(3)	XX		Director <sup>(2)</sup> Queen's Park	No change	Director <sup>(2)</sup> Queen's Park Includes: Director - Operational Support Branch Director - Ontario Centre for the Prevention of Child Abuse Staff of Centre designated by Director to receive Director's Delegation
Permit inspection and removal of information in Register	S.71(9)	XX		Director <sup>(2)</sup> Queen's Park	No change	

# Appendix 3 (Cont'd)

## DIRECTORS DUTIES/RESPONSIBILITIES CHILD AND FAMILY SERVICES ACT      Approved by OMC -      PART III: Child Protection

DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Approval inspection and use of information for research	S. 71(10)	XX		Director(2) Queen's Park	No change	
Approval inspection of records by qualified practitioner	S. 71(12)	XX		Director(2) Queen's Park	No change	
Director or Ministry employee under Director's authority amend Register	S. 71(13)	XX		Director(2) Queen's Park	No change	
Director's hearing re removal of information from Register	S. 72(4)b	XX		Director(2) Queen's Park	No change	
Removal of person's name from Register or otherwise amend Register	S. 72(8)	XX		Director(2) Queen's Park	No change	

### Appendix 3 (Cont'd)

#### DIRECTOR'S

#### DUTIES/RESPONSIBILITIES

CHILD AND FAMILY SERVICES ACT Approved by OMC - PART III: Child Protection

DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Transfer child from one Society to another	S.73(1)a	XX		Area Manager	See Note #1 re Transfers	Note #1 re Transfer <ul style="list-style-type: none"> <li>Transfers within area - Area Manager's approval</li> <li>Transfers between 2 areas - Regional Director's approval</li> <li>Transfers between 2 regions - approval of Queen's Park Director(1) required</li> <li>Transfer of supervision usually completed by Society Director involved only in special cases</li> <li>Transfer of care must involve Director</li> </ul>
May transfer child from one placement to another	S.73(1)b	XX		Area Manager	No change	
Approve homemakers	S.74(1)	XX		Area Manager or Local Director	No change	In practice usually completed by Local Director
May apply for extension, evaluation or termination of restraining order	S.76(4)e	XX		Area Manager	No change	In practice usually done by Society or other parties
Approval of placements other than in accordance with child's own religious faith	S.82(5)	XX		Area Manager	No change	Under review

Appendix 3 (Cont'd)

DIRECTOR'S DUTIES/RESPONSIBILITIES						
CHILD AND FAMILY SERVICES ACT				Approved by OMC -		
				PART IV: Young Offenders		
DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
UNDER THIS PART OF THE LEGISLATION THEY ARE AS FOLLOWS:						
Provision of services to persons over 16 years	S.87(1)		XX		Pending recommendation	
Director to detain young person in secure detention	S.89(2)		XX		North - Probation Supervisor Other - Superintendent - Detention	
Respond to Youth Court re transfer to place of open temporary detention from secure temporary detention	S.89(5)		XX		North only Probation Supervisor Other Regions Superintendent - Detention	
Place young person in or transfer to maximum security custody	S.90(2)		XX		Probation Supervisor	
Transfer from maximum to medium security custody	S.90(3)		XX		Probation Supervisor	
Provincial Director to provide written reasons for determinations under this section	S.90(4)		XX		Probation Supervisor	



## Appendix 3 (Cont'd)

DIRECTOR'S DUTIES/RESPONSIBILITIES						PART IV: Young Offenders	
CHILD AND FAMILY SERVICES ACT						Approved by OMC -	
DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS	
Provincial Director to specify place of open custody	S.91(a)		XX		Probation Supervisor		
Receive and respond to recommendations of the Custody Review Board	S.93(6)a		XX		All Provincial Directors		
IN ADDITION TO THE ABOVE NOTED DUTIES, THE PROVINCIAL DIRECTOR IS RESPONSIBLE FOR PERFORMING DUTIES UNDER THE YOUNG OFFENDERS ACT. APPENDIX 'A' OUTLINES THOSE DUTIES AND IS INCLUDED FOR INFORMATION PURPOSES							

### Appendix 3 (Cont'd)

#### DIRECTOR'S

#### DUTIES/RESPONSIBILITIES

CHILD AND FAMILY SERVICES ACT      Approved by OMC -      PART VI: Extraordinary Measures

DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Approve locked secure isolation room	S.120(1)		Expanded See Comments	Area Manager	No change	<ul style="list-style-type: none"> <li>- Under CESA approved rooms in residences only</li> <li>- CESA expands duty to apply to residential and non-residential facilities</li> </ul>
Withdraw approval under S.120(1)	S.120(2)	XX		Area Manager	No change	
Approve secure isolation for children under 12	S.121(3)(b)		XX		Area/Local/ District Managers Specific Program Supervisors Administrators Schedule I Facilities and OMC's Specific Transfer Payment Agency Administrators	<ul style="list-style-type: none"> <li>- Approved by OMC - May/85</li> <li>- Regional Directors to determine specific individuals to receive delegations</li> </ul>

# Appendix 3 (Cont'd)

## DIRECTOR'S

### DUTIES/RESPONSIBILITIES

CHILD AND FAMILY SERVICES ACT

Approved by OMC -

PART VII: Adoption

DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
May request Society to secure adoption	S.134(1)b		X	N/A	Area Manager	
Designate Licensee as exempt from S.135 SS(3)(4)	S.135(5)		X	N/A	Director(1) Queen's Park	
Approval of placement by licensee - terms and conditions	S.136(2)(a) S.136(5)	XX		Director (1) Queen's Park		
Registration of unregistered adoptions	S.135(7)		XX	N/A	All Directors	
Approval or refusal of placement outside Canada	S.136(4)		XX	N/A	Director Queen's Park	
Review decision by Society or licensee to remove a child from a home or refuse to place	S.138(1)a	XX		All Directors		Note #2 Area Manager's responsibility for Society Adoptions Queen's Park Director(1) for Private Adoptions Refer to Note #2
Confirm decision	S.138(1)c	XX		All Directors	No change	
Record decision and do anything further that the Society or licensee may do under this part with respect to child's placement	S.138(1)d	XX		All Directors	No change	Refer to Note #2

Appendix 3 (Cont'd)

DIRECTOR'S DUTIES/RESPONSIBILITIES						
CHILD AND FAMILY SERVICES ACT				Approved by OMC -		
PART VII: Adoption						
DESCRIPTION OF	REFERENCE	CONSOLI- DATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Director to take into account continuity	S.138(2)		XX	N/A	All Directors	Refer to Note #2
Receive notification where removal of child is desired by placement home, Society or licensee or where 1 year has expired and no order has been made	S.139(1) (2)	XX		All Directors	Local Director for Society Adoptions No change - Private Adoptions	Approved OMC/October 29, 1985
Director may confirm child's placing	S.139(3)a	XX		All Directors	Local Director for Society Adoptions No change - Private (Queen's Park Director(1))	Approved October, 1985
Direct licensee to place child in care and custody of a specified Society	S.139(3)b	XX		Director(1) Queen's Park	No change	
Direct Society under whose care, custody, control of child be given, to bring child before Court under Part III Protection	S.139(3)c	XX		Area Manager	Local Director	Approved October 29, 1985
Do anything the Society or licensee that places the child may do with respect to the child's further placement	S.139(3)d	XX		All Directors	Local Director Society Adoptions No change - Private adoptions (Queen's Park Director(1))	Approved October 29, 1985
Direct Society or licensee that placed child to return child to parent	S.139(3)e	XX		All Directors	Local Director Society Adoptions No change - Private adoptions (Queen's Park Director(1))	Approved October 29, 1985

Appendix 3 (Cont'd)

DIRECTORS					
DUTIES/RESPONSIBILITIES					
CHILD AND FAMILY SERVICES ACT			Approved by OMC -		PART VII: Adoption
DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY
Review child's status re notice given under S.139(1) or (2)	S.139(3)	XX		All Directors	Local Director for Society adoptions No change - Private
Prepare statement regarding desirability of proposed adoption	S.143(1)b	XX		All Directors	No change
Prepare statement regarding desirability of proposed adoption	S.143(1)a	XX See comments		Private - Director Queen's Park Society - Local Director	No change
Prepare statement regarding desirability of proposed adoption	S.143(1)(c)			Private - Director Queen's Park Society - Local Director	No change
Amend statement (S.143(1) and may attend hearing and make submissions	S.143(3)	XX		All Directors	Involves Director - Queen's Park, Area Managers and Local Directors as appropriate
Where recommending no order - file report with Court and serve on applicant 30 days before hearing	S.143(4)	XX		All Directors	Involves Director - Queen's Park, Area Managers and Local Directors as appropriate

Approved OMC - October, 1985

Refer to Note #2

Also - 2 year provision [140(1)(c)] has been added to 143(1)(a) and (c)

Involves Director - Queen's Park, Area Managers and Local Directors as appropriate

Involves Director - Queen's Park, Area Managers and Local Directors as appropriate



Appendix 3 (Cont'd)

<p style="text-align: center;">DIRECTOR'S DUTIES/RESPONSIBILITIES</p>						
CHILD AND FAMILY SERVICES ACT				Approved by OMC -		PART VII: Adoption
DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Access to Court files regarding adoption application	S.145(2)c	XX		All Directors	No change	Refer to Note #2 - Act also gives authority to Local Director
Appeal an Adoption Order	S.150(1)b	XX		All Directors	No change	Refer to Note #2 - Act also gives authority
Written director to open sealed court adoption files	S.156(2)2	XX		Director(2) Queen's Park	No change	
Receive certified copy of Adoption Order	S.156(3)b	XX		Director(1) Queen's Park	No change	
Inspection by or disclosure to Ministry, Director or an employ of Ministry who has a Director's written authority, of information kept on Ministry or a Society or licensee	S.157(2)b	XX		Director(1) Queen's Park	No change	Under review by Dr. Garber
Disclosure of information of a prescribed class to a person whose access to the information, in a Director's opinion, is necessary to protect any person's health	S.157(2)d	X		Director(1) Queen's Park	No change	Under review by Dr. Garber
Release of copy of an Adoption Order	S.157(2)(e) (1)	X		Director(1) Queen's Park	No change	Under review by Dr. Garber

Appendix 3 (Cont'd)

DIRECTOR'S DUTIES/RESPONSIBILITIES						
CHILD AND FAMILY SERVICES ACT				Approved by OMC -		
PART VII: Adoption						
DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLI- DATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
<u>VOLUNTARY ADOPTION DISCLOSURE REGISTRY</u>						
Maintain Register	S.158(3)	XX		Director (1) Queen's Park	No change	
Receive application to be named in Registry	S.158(4)	XX		Director (1) Queen's Park	No change	
Obtain Court copies of the documents referred to in S.156(2)	S.158(7)	XX		Director(1) Queen's Park	No change	
Forward information to an appropriate Society	S.158(7)c	XX		Director(1) Queen's Park	No change	
Make information available, with counselling to adopted child and/or birth parent	S.158(7)d	XX		Director(1) Queen's Park	No change	
Authorize inspection, removal or alteration of information kept in the Register	S.158(13)	XX		Director(1) Queen's Park	No change	
Authorize disclosure of information obtained by person otherwise than under clause (7)(d) or subsection (11)	S.158(13)	XX		Director(1) Queen's Park	No change	
Director authorize disclosure where adopting parents consent not required	S.158(5)a, b,c		XX	N/A	Director(1) Queen's Park	

Appendix 3 (Cont'd)

<p style="text-align: center;">DIRECTOR'S DUTIES/RESPONSIBILITIES</p> <p style="text-align: center;">CHILD AND FAMILY SERVICES ACT      Approved by <b>CMC</b> -      PART VIII: Confidentiality and Access to Records</p>						
DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Approve Service Provider to disclosure of a person's record to a person engaged in research	S.166(2)		X	N/A	All Directors	Refer to Note 12
Receive Information from a service provider of a person's record without consent referred to in Section 165	S.166(3)		X	N/A	All Directors	Refer to Note 12

# Appendix 3 (Cont'd)

DIRECTOR'S DUTIES/RESPONSIBILITIES CHILD AND FAMILY SERVICES ACT					
				Approved by OMC -	PART IX: Licensing
DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLIDATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY
Issuing licences for children's residences or providing residential care for three or more children not of common parentage in places that are not children's residences	S.176(1)	XX		Area Manager	No change
Licence to place child for adoption	S.176(2)	XX		Director(1) Queen's Park	No change
Establish terms and conditions to a licence	S.176(3)			All Directors	No change
Renewal of licence	S.176(5)	XX		All Directors	No change
Provisional licence	S.176(6)	XX		All Directors	No change
Refuse licence	S.178	XX		All Directors	No change
Refuse to renew or may revoke licence	S.179	XX		All Directors	No change
Notice of proposal to refuse to issue or revoke with written reasons to be served on applicant or licensee	S.180(1)	XX		All Directors	No change

Note #3.  
Area Managers handle licence for matters regarding children's residences  
Director(1) Queen's Park handles licence matters re adoption

Refer to Note #3

Refer to Note #3

Refer to Note #3

Refer to Note #3

Refer to Note #3

Appendix 3 (Cont'd)

DIRECTOR'S DUTIES/RESPONSIBILITIES						
PART IX: Licensing						
Approved by OMC -						
CHILD AND FAMILY SERVICES ACT						
DESCRIPTION OF RESPONSIBILITY	REFERENCE IN ACT	CONSOLI-DATED	NEW	CURRENT POSSESSOR OF RESPONSIBILITY	RECOMMENDED POSSESSOR OF RESPONSIBILITY	COMMENTS
Notice re entitlement to a hearing	S.180(2)	XX		All Directors	No change	Refer to Note #3
Carry out proposal where hearing not required	S.180(3)	XX		All Directors	No change	Refer to Note #3
Carry out orders of the Board	S.180(4)	XX		All Directors	No change	Refer to Note #3
By causing notice to be served on a licensee, suspend licence without hearing where there is an immediate threat to the health, safety or welfare of the children	S.183(1)	XX		All Directors	No change	Refer to Note #3
Party to proceedings before the Children's Services Review Board	S.184(1)	XX		All Directors	No change	Refer to Note #3
Apply to Supreme Court for injunction	S.188(1)	XX		All Directors	No change	Refer to Note #3





#### APPENDIX 4

##### GENERAL PROVISIONS GOVERNING THE OPERATION OF CORPORATIONS APPROVED AS "APPROVED AGENCIES" FOR THE PURPOSES OF THE CHILD AND FAMILY SERVICES ACT, 1984

Volume II of the training materials sets out, in detail, provisions applicable to Boards of Directors and Senior Management staff of "service providers" as defined in the Child and Family Services Act, 1984.

The following general material relates to the operation of a corporation incorporated under Part III of the Corporations Act and approved as an "agency" for the purposes of the Child and Family Services Act, 1984 and the Regulations thereunder.

The Child and Family Services Act, 1984 provides for the approval of an "agency" to provide a "service" under the Act and Regulations. The term "agency" is defined in section 3 of the Act to mean "a corporation".

Corporations can be incorporated in a number of ways, for example,

- (1) the Business Corporations Act, 1982; these are corporations incorporated with share capital and are carried on for profit;
- (2) the Co-operative Corporations Act; these corporations are incorporated with share capital but are operated as nearly as possible at cost;
- (3) a general or special Act of the Government of Ontario;
- (4) a general or special Act of the Parliament of Canada; and
- (5) the Corporations Act

Most of the corporations funded by the Ministry of Community and Social Services are incorporated under or subject to the provisions of Part III of the Corporations Act. They are incorporated without share capital and with objects of a charitable purpose. They are "non-profit", i.e., they are carried on without purpose of gain for the members of the corporation. The directors serve without remuneration and, upon dissolution of the corporation and after payment of all debts and liabilities, its remaining property is to be distributed or disposed of to charitable corporations which carry on their work solely in Ontario or Canada.

Appendix 4 (cont'd)

PROVISIONS APPLICABLE TO CORPORATIONS GOVERNED BY  
PART III OF THE CORPORATIONS ACT

Letters Patent

The Ministry of Consumer and Commercial Relations includes in the Letters Patent of a corporation incorporated under Part III, clauses

- (a) requiring that the corporation shall be subject to the Charities Accounting Act and the Charitable Gifts Act;
- (b) limiting the borrowing power of the corporation to borrowing money for current operating expenses, except where the corporation borrows on the security of real or personal property; and
- (c) providing for the cancellation of the Letters Patent if the corporation has failed to comply with the Charities Accounting Act or the Charitable Gifts Act.

In addition, the provisions mentioned previously concerning operation without gain, non-remuneration of directors and distribution of assets on dissolution are included in the Letters Patent.

Boards of Directors

Are required to manage the affairs of the corporation. Each Board is to consist of a fixed number of Directors, not fewer than three (section 283 of the Corporations Act).

The persons named in the Letters Patent are the first directors of the corporation until they are replaced by the same number duly elected or appointed in their place (section 284). The manner of election or appointment is generally set out in the by-laws of the corporation. A corporation may increase or decrease the number of its directors by special resolution. The notice of the special resolution is required to be filed with the Minister of Consumer and Commercial Relations and published in the Ontario Gazette within fourteen days after the resolution is confirmed by the members.

A director must be eighteen or more years of age and may not be an undischarged bankrupt. The affairs of the corporation are to be managed by its members and not by an outside authority. Therefore, generally a director of a corporation is required to be a member or to become one within ten days after election or appointment as a director of the corporation.

#### Appendix 4 (cont'd)

Members usually elect the directors of a corporation unless the by-laws, Letters Patent or applicable legislation provide for ex-officio directors or for another method of appointment, e.g., municipal representatives on Boards of children's aid societies.

##### By-Laws

The directors of the corporation have the sole power to pass by-laws that are not contrary to the Act, the Letters Patent or Supplementary Letters Patent. By-laws may be passed to regulate such things as admission of members, fees and dues, qualifications of directors, time for and manner of election of directors.

It should be noted that every by-law passed by the board of directors and every repeal of a by-law has effect only until it is confirmed by the members of the corporation at a general meeting called for that purpose or until the next annual meeting of the members of the corporation. Unless the by-law is confirmed in this manner, it ceases to have effect.

By-laws are not required to be approved by the Minister of Consumer and Commercial Relations nor are they required to be filed with the Minister. However, subsection 13(1) of the Child and Family Services Act requires an approved agency to file a certified copy of its by-laws and of any amendment to them, with the Minister of Community and Social Services immediately after they are made. Subsection 13(2) of the Act indicates that the by-laws of an approved agency are to contain "the prescribed provisions". The term "prescribed" is defined in the Act to mean "prescribed by Regulations".

At the present time, there are no regulations governing the provisions to be included in the by-laws of approved agencies. However, by policy at the present time, the Model C.A.S. By-Law and the Explanatory Notes to that By-Law are to be used as a guide by approved agencies who are drafting or amending their by-laws.

Subsection 15(5) of the Act continues a provision found formerly in the Child Welfare Act. This provision is applicable only to approved agencies that are designated as children's aid societies under the Act. This provision indicates that a by-law and an amendment to a by-law of a children's aid society do not come into force until they are approved by the Minister. The Model By-Law for C.A.S.s will continue to be applicable to societies under the new Act.

## Appendix 4 (cont'd)

### Auditors

Subsection 94(1) of the Corporations Act requires a corporation to appoint one or more auditors, section 96 sets out those matters to be included in the auditor's report and section 97 outlines the matters to be presented by the directors to the members at each annual meeting, including the auditor's report.

### RESPONSIBILITIES AND LIABILITIES OF DIRECTORS

Directors have a fiduciary relationship with the corporation and are under an obligation to act in the best interest of and in the utmost good faith towards the corporation in the directors' dealings with the corporation or on its behalf. Directors should not place themselves in a position where there is a conflict between their duties as a director and any other interests.

Section 71 of the Corporations Act deals with conflict of interest and requires every director who is, in any way, directly or indirectly interested in a proposed contract or a contract with the corporation, to declare his interest. Where the director declares his interest in accordance with the requirements of this section and abstains from voting, he is not liable to account for any profit accruing to him as a result of the contract. Although the Act itself addresses specifically pecuniary/financial interests, the general common law fiduciary duty of a director exists overall. Therefore, as a general rule, if a director has an interest, he should declare that interest and abstain from the decision-making process.

Section 81 of the Corporations Act provides that directors are liable individually and as a group while they are directors to employees for debts due to the employees for services performed for the company, not exceeding six months wages and for vacation pay accrued for not more than twelve months.

Section 80 of the Corporations Act provides that, with the consent of the members given at any meeting of members, directors may be indemnified by the corporation against costs, charges, expenses, etc., that a director or directors incur in any action, suit or proceeding that is brought against a director or directors in respect of anything done or permitted to be done by a director or directors in the execution of the duties of his office and all other costs, charges and expenses that a director sustains, incurs, etc., in relation to the affairs of the corporation, except those occasioned by a director's own wilful neglect or default.



Appendix 4 (cont'd)

THE CHARITIES ACCOUNTING ACT AND THE CHARITABLE GIFTS ACT

The Charities Accounting Act

Requires a person, who holds land for charitable purpose, to hold the land only for the purpose of actual use or occupation of the land for the charitable purpose. Where land had not been actually used or occupied for the charitable purpose for a period of three years, if it is not required for actual use or occupation for the charitable purpose and will not be required for actual use or occupation in the immediate future, the Public Trustee may vest the land in the Public Trustee subject to the right of the person to apply to the Supreme Court for a revesting order.

Charitable Gifts Act

Prohibits a charitable corporation from carrying on a business. Violation of the Act could result in a corporation losing its charitable status and this might include loss of exemption from municipal taxation, loss of right to give receipts for donations and gifts, and to claim an exemption from income tax.

MISCELLANEOUS PROVISIONS OF THE CHILD AND FAMILY SERVICES, 1984

Security for Payment of Funds

Section 12 of the Act authorizes the Minister to require the recipient of funds to secure the funds by way of mortgage, lien, by registration of agreement, or in such other manner as the Minister determines.

The Capital and Administrative Services Branch of the Ministry has prepared a document entitled "Guidelines for Protecting the Provincial Interest in Real Assets Acquired Through Ministry Financial Assistance" and one entitled "Financial Agency Capital: Policies and Guidelines" dealing with the procedures for capital payments and security for the payment of funds. The Ministry's policy with respect to requiring funds to be secured and the procedures for securing the funds are outlined therein.

Appendix 4 (cont'd)

Transfer of Assets

Subsection 10(3) prohibits an approved agency from transferring or assigning any of its assets with financial assistance from the Province Ontario, except in accordance with the Regulations. The documents referred to above, as well as the requirements of the Regulations and, in particular, sections 11 and 12 are applicable here.





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